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ABSTRACT

As a result of the Bureau of Indian Affairs' (BIA) laxness in improving management of programs and services for Indians, the Chairman of the House Committee on Interior and Insular Affairs requested the General Accounting Office (GAO) to review the accountability of federal funds and property involving contracts and grants totaling about $726 million awarded during the fiscal years 1978 through 1980 for the benefit of Indians. GAO's review of 178 grants and contracts disclosed that the BIA continues to have problems administering and monitoring Indian programs and accounting for federal funds. Repeating the substance of its 1978 recommendations that the BIA revise its policies, procedures, and practices pertaining to contracts and grants with Indian tribes to improve accountability for federal funds, GAO also suggested that the Secretary of Interior direct the Assistant Secretary for Indian Affairs to consider three possible alternative organizational structures for the BIA to separate program and procurement functions. This change would eliminate inherent conflicts between those responsible for implementing services and programs and those responsible for monitoring and reporting on tribal grant and contract performance and further the objectives of the Indian Self-Determination Act. GAO also urged Congress to require the Secretary of Interior to report on the progress made in implementing GAO's recommendations. (ERB)

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BY THE COMPTROLLER GENERAL

Report To The Chairman, Committee On Interior And Insular Affairs House Of Representatives

OF THE UNITED STATES

Still No Progress In Implementing Controls Over Contracts And Grants With Indians

The Bureau of Indian Affairs has not taken action recommended by GAO in February 1978 to improve controls over grants and contracts with Indian tribes. Among other things,

--contracts and grant agreements should include adequate criteria for measuring tribal performance so that the use of Federal funds can be properly audited and program results can be evaluated,

--contracts and grant proposals should be submitted and approved before their starting dates and

--contracts and grants should be adequately supervised.

GAO is repeating the substance of its prior recommendations to improve controls over grants and contracts with Indian tribes to ensure that required services are provided to Indians. GAO is also proposing three alternative Bureau organizational structures to separate contract and grant administrative functions from program functions.

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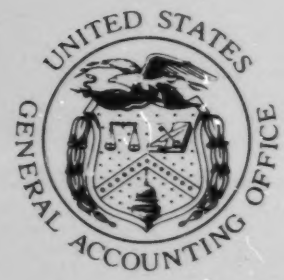

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-200039

The Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives

Dear Mr. Chairman:

As you requested, this report discusses the accountability of Federal funds and property used in Government contracts and grants with Indian tribes. It also discusses methods for improving the accountability of Federal funds and proposes three alternative organizational changes for the Bureau of Indian Affairs.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 3 days from the date of the report. At that time we will send copies to the Director, Office of Management and Budget; the heads of the departments or agencies involved; and other interested parties.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT
TO THE CHAIRMAN, HOUSE COMMITTEE
ON INTERIOR AND INSULAR AFFAIRS

STILL NO PROGRESS IN IMPLEMENTING CONTROLS OVER CONTRACTS AND GRANTS WITH INDIANS

D I G E S T

Over the years, GAO; congressional committees; the American Indian Policy Review Commission; a Bureau of Indian Affairs, Department of the Interior, task force; and others have reported on weaknesses in the Bureau's management of programs and services for Indians. In spite of this continued criticism, the Bureau has been lax in making improvements. Unless fundamental changes are made, problems in managing Indian programs and services may continue and improvement of the Indians' quality of life will be impeded.

The Chairman of the House Committee on Interior and Insular Affairs asked GAO to review the accountability of Federal funds and property involving contracts and grants awarded for the benefit of Indians.

GAO's review of 178 grants and contracts disclosed that the Bureau of Indian Affairs continues to have problems administering and monitoring Indian programs and accounting for Federal funds. During fiscal years 1978 through 1980, the Bureau awarded grants and contracts to Indian tribes totaling about $726 million.

In a February 1978 report, GAO made a number of recommendations to the Bureau to improve its administration of contracts and grants.

GAO is repeating the substance of its 1978 recommendations that the Bureau revise its policies, procedures, and practices pertaining to contracts and grants with Indian tribes to improve accountability for Federal funds. (See pp. 35 and 36.)

To ensure that contract and grant provisions are effectively carried out, GAO suggests that the Secretary direct the Assistant Secretary for Indian Affairs to consider three possible alternative organizational structures for the Bureau to separate program and procurement functions. This change would (1) eliminate inherent conflicts between those responsible for implementing

services and programs for the benefit of Indians and those responsible for monitoring and reporting on tribal grant and contract performance and (2) further the objectives of the Indian Self-Determination Act. (See pp. 27 to 32.)

Because the Bureau has made little progress in resolving its continuing management deficiencies, the Congress, during its authorization, oversight, and appropriation deliberations, should require the Secretary of the Interior to report on the progress made in implementing GAO's recommendations. (See p. 36.)

CONTRACTS AND GRANTS AWARDED RETROACTIVELY

GAO reviewed 175 contracts and grants awarded after February 1978 and found 141 totaling $15 million where the starting date preceded the award date from a few days to 11 months. Awarding contracts or grants retroactively results in expenditure of Federal funds over which the Federal Government has little if any control. (See p. 8.) GAO reported a similar situation in its February 15, 1978, report entitled "Controls Are Needed Over Indian Self-Determination Contracts, Grants, and Training and Technical Assistance Activities To Insure Required Services Are Provided to Indians" (CED-78-44).

PERFORMANCE MEASUREMENT CRITERIA LACKING

GAO's February 1978 report stated that contracts and grants that the Bureau had awarded to Indian tribes did not always have adequate criteria for measuring tribal performance. Similar problems are still occurring; out of 175 contracts and grants GAO reviewed, 82 had inadequate performance measurement criteria and 34 had no criteria at all. Without adequate criteria for measuring tribal performance in contract or grant agreements, the Bureau cannot evaluate program results and properly audit the use of Federal funds. (See p. 9.)

LIMITED MONITORING OF CONTRACTS AND GRANTS

The Indian Self-Determination Act mandates and various Federal regulations and guidelines require that contracts and grants with tribes be supervised and monitored. The Bureau's contract

and grant monitoring, however, has been hampered by part-time supervision, inadequate monitoring of reports, little personnel training, and insufficient auditing. GAO reported similar conditions in its February 1978 report. (See p. 11.)

POOR CASH MANAGEMENT

The Bureau was not requiring some tribes to submit timely expense vouchers justifying cash withdrawals under their letters of credit. For example, three tribes had used their letters of credit to withdraw about $18 million without providing expense vouchers to the Bureau. At the time of GAO's review, expense vouchers for about $5.9 million had not been submitted although the funds had been withdrawn for a year or more and some for as many as 4 years. (See p. 14.)

WEAK TRIBAL FINANCIAL MANAGEMENT

Interior's Office of the Inspector General identified two Indian tribes that did not have adequate control over Federal contract and grant funds. Although the financial management systems developed by the tribes provided for controls, the systems were not always used properly. This resulted in improper expenditure of funds, funds being transferred between Federal contract and grant programs, inadequate documentation supporting expenditures, and improper reimbursements. The audits questioned about $2.2 million of costs and disallowed about $747,000. (See p. 18.)

QUESTIONABLE PRACTICES

Several practices involved grants, contracts or modifications to existing contracts which GAO believes should be stopped. These include

--the unauthorized use of expired appropriations in funding contracts,

--increasing funding without increasing the amount of services to be provided,

--increasing contracts' funding level without the tribes requesting the additional funds, and

--using training and technical assistance grant funds for purposes other than improving tribal management capabilities. (See p. 21.)

PROCUREMENT AND PROGRAM FUNCTIONS SHOULD BE SEPARATED

GAO noted a potential conflict of interest between the program-related duties of contract/grant officer representatives and their procurement-related duties of monitoring and reporting on tribal performance. Under self-determination, tribes may contract for the performance of personal services which would otherwise be performed by Federal Bureau employees. This situation presents a dilemma or inherent conflict for Bureau employees who, if they are successful in implementing self-determination, may well be eliminating their own jobs. Therefore, it is not in Bureau employees best interest to encourage tribes to use self-determination contracts since by doing so they may be putting themselves out of jobs.

INADEQUATE CONTROL OVER GOVERNMENT PROPERTY

Five of the nine tribes GAO reviewed had inadequate or, in some cases, no property management systems. As a result, Federal agencies are unable to determine what Government property is being used by these Indian tribes, and the tribes do not have adequate controls for the Government property in their possession. (See p. 33.)

RECOMMENDATIONS

GAO is repeating its prior recommendations to the Secretary of the Interior that the Assistant Secretary for Indian Affairs be directed to revise the Bureau's policies, procedures, and practices to:

--Require that all contract and grant agreements include specific criteria against which to measure performance.

--Terminate a contract or grant where tribal performance constitutes grounds for termination under the pertinent statute.

--Prohibit award of contracts in which the starting date precedes the date of award.

--Enforce compliance with the letter-of-credit procedures.

--Require monitoring of tribal letter-of-credit withdrawals on each contract or grant to ensure that a tribe does not withdraw more than the amount authorized by the contract or grant.

--Require the Bureau to arrange with CPA firms for annual financial audits of contracts and grants with Indian tribes.

--Prohibit, where no law specifically permits carryover of funds, the practice of using prior fiscal year funds to pay for goods and services that are to be provided in the subsequent fiscal year unless the services are part of a contract which cannot feasibly be divided between fiscal years.

--Prohibit award of contract modifications without a request from the tribe and a corresponding increase in the work statement or in the amount of services to be provided.

--Require tribes to submit appropriate financial and program progress reports.

--Require tribes to develop adequate property management systems.

To ensure that contract and grant provisions are effectively carried out, GAO suggests that the Secretary direct the Assistant Secretary for Indian Affairs to consider three possible alternative organizational structures for the Bureau. (See pp. 27 to 32.) The reorganization should include establishing full-time contract administrators reporting directly to the contracting officer.

The Secretary of Health and Human Services should direct the Administrator of the Health Services Administration to revise Indian Health Service policies, procedures, and practices as appropriate to:

--Require that all contract or grant agreements include specific criteria against which to measure performance.

--Terminate a contract or grant where tribal performance constitutes grounds for termination under the pertinent statute.

--Prohibit award of contracts in which the starting date precedes the date of award.

--Require tribes to develop adequate property management systems.

--Require tribes to submit appropriate financial and program progress reports.

AGENCY COMMENTS AND GAO's EVALUATION

The Department of Health and Human Services generally agreed with GAO's recommendations and has taken or is planning to take appropriate action.

The Department of the Interior generally agreed with GAO's findings and recommendations and has taken or is planning to take a number of actions to deal with the identified problems. Initially, Interior did not agree with any of GAO's proposed organizational structures for the Bureau. But after GAO met with Interior officials, they agreed to reconsider GAO's suggestions for reorganizing the Bureau. (See p. 37.)

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ABBREVIATIONS

BIA	Bureau of Indian Affairs
CPA	certified public accountant
GAO	General Accounting Office
IHS	Indian Health Service

CHAPTER 1

INTRODUCTION

On January 3, 1980, the Chairman of the House Committee on Interior and Insular Affairs requested that we review the accountability of Federal funds and property used in Government contracts and grants with Indian tribes. The Chairman asked for recommended solutions to problems identified in our February 1978 report entitled "Controls Are Needed Over Indian Self-Determination Contracts, Grants, and Training and Technical Assistance Activities To Insure Required Services Are Provided to Indians" (CED-78-44, Feb. 15, 1978).

In our February 1978 report we stated that the Bureau of Indian Affairs (BIA) did not have adequate control over contracts, grants, and technical assistance activities authorized by Title I of the Indian Self-Determination and Education Assistance Act. We agreed to determine if the situation has improved at BIA and if other Federal agencies are having the same problems.

SELF-DETERMINATION POLICY

In 1970 the President, in a message to the Congress, called for a new American Indian policy--"self-determination without termination." This policy was offered as an alternative to the past Federal policy of terminating responsibilities and services to Indian tribes.

On January 4, 1975, the policy proposed in the President's message became law with the enactment of the Indian Self-Determination and Education Assistance Act (Public Law 93-638). In passing the act, the Congress declared its commitment to maintain the Federal Government's unique and continuing relationship with, and responsibility to, the Indian people through:

> "* * * the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services."

The act gives Indians the opportunity to administer Departments of the Interior and Health and Human Services 1/ programs.

1/The Department of Health, Education, and Welfare was partitioned on May 4, 1980, into the Department of Health and Human Services and the Department of Education. For purposes of this report all references will be to the Department of Health and Human Services.

Section 102 directs the Secretary of the Interior, if requested by any Indian tribe, to contract with any tribal organization to plan, conduct, and administer programs or program segments which BIA is authorized to administer for the benefit of the Indians. Section 103 contains similar contracting provisions for programs administered by the Indian Health Service (IHS) under authority of the Secretary of Health and Human Services. Each Secretary may decline to enter into any contract if he finds that:

> "* * * (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory; (2) adequate protection of trust resources is not assured; or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract * * *."

In such cases, however, each Secretary must help tribes overcome the obstacles which prompted the refusal and must provide the tribes with a hearing and an opportunity to appeal.

The act also authorizes each Secretary to award grants to help tribes develop the capability to operate programs for which they might eventually contract under sections 102 and 103. The Senate Committee on Interior and Insular Affairs 1/ contemplated that these grants would be used

> "* * * (1) to undertake orderly planning for the takeover of the more complex federally operated programs; (2) to train Indians to assume managerial and technical positions once the tribe has assumed control and management of Federal programs; and (3) to finance a thorough evaluation of performance following a reasonable period of time in which a former federally-controlled program has been administered by a tribe under contract."

Other sections of the act (1) authorize the assignment of Federal employees to tribal organizations in order to staff contracted programs, (2) provide for the retention of certain Federal benefits for civil service employees who are hired by tribes, and (3) permit contracts and grants for personal services which would otherwise be performed by Federal employees. The act also assures that none of the legislative provisions will have the effect of authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

1/S. Rept. No. 93-762, p. 13 (1974).

ADMINISTRATION OF INDIAN PROGRAMS

The Department of the Interior estimates that Federal funding of Indian programs in fiscal year 1980 amounted to about $2.1 billion. Interior funded about $1 billion and the Department of Health and Human Services funded about $850 million. Other Federal agencies such as the Economic Development Administration, the Department of Commerce, and the Department of Energy funded about $300 million.

BIA has primary responsibility for administering Federal Indian programs. Its principal objectives are to encourage and train Indians to manage their own affairs and to fully develop their human and natural resource potentials. BIA helps develop, helps manage, and operates public education systems on the reservations; works with the Indian people to obtain or provide social and community development programs and services; and helps establish and administer economic and natural resource development programs. The Congress has also vested various "trust" responsibilities in BIA with respect to tribal lands, moneys, and mineral rights.

Self-determination activities are administered by BIA's headquarters office in Washington, D.C., and 12 area and 86 agency offices throughout the United States. Each agency office, which generally reports to an area office, is responsible for BIA's day-to-day contact with one or more tribes. BIA services about 498 Indian tribes and Alaska Native groups.

The IHS within the Public Health Service, Department of Health and Human Services, is responsible for providing comprehensive health care to Indians. It offers programs for hospitalization, outpatient medical care, public health nursing, school health, maternal and child health, dental and nutrition services, health education, and environmental health services. The programs are administered in the field through eight area offices and four program offices. Each is responsible for operating the Indian health program within its geographical area.

The following table shows Indian self-determination contract and grant activity by BIA and IHS.

BIA	FY 1978	FY 1979	FY 1980
	---------(000 omitted)---------		
Indian self-determination contracts	$181,700	$188,500	$166,500
grants	17,000	17,500	17,700
Buy Indian Act contracts	51,371	46,610	35,574
Total	$250,071	$252,610	$219,774

IHS	FY 1978	FY 1979	FY 1980
	---------(000 omitted)---------		
Indian self-determination contracts	$ 32,293	$ 48,341	$ 58,446
grants	12,336	10,170	4,231
Buy Indian Act contracts	58,107	47,525	38,251
Total	$102,736	$106,036	$100,928

The Buy Indian Act of 1910 authorized and encouraged the Government to buy Indian goods, services, and labor in order to enhance tribal economic development. This act allows BIA to deal exclusively with Indian tribes or firms for the purchase of many goods and services that may be available through non-Indian sources.

OBJECTIVES, SCOPE, AND METHODOLOGY

In response to the Chairman of the House Committee on Interior and Insular Affairs, we reviewed the accountability of Federal funds and property involving contracts and grants awarded for the benefit of Indians. We examined Federal policies, procedures, and practices for awarding and administering contracts and grants to Indian tribes under the Self-Determination and Buy Indian Acts. Most of our Federal-level work was at BIA and IHS, since they provide more than 80 percent of the assistance to Indian tribes. We also reviewed a selected number of other Federal agencies' contracts and grants with Indian tribes, including associated audit reports.

Our conclusions and recommendations are based on our review of selected contracts and grants, our prior reports, Interior's Office of the Inspector General and other internal audits of contracts and grants between BIA and Indian tribes, and independent public accountants' audits of tribal contracts. The tribes and samples of contracts and grants selected for our review are not necessarily representative of the total universe. We did, however, try to be as representative as practical by selecting tribes which would give a broad geographical coverage, including both large and small tribes in terms of population and contract and grant activity. Some tribes were excluded because Interior's Office of the Inspector General had recently completed contract audits or was planning to start one.

The following tribes and responsible BIA and IHS area offices were included in our review:

Tribe	State	BIA area office	IHS area office
All Indian Pueblo Council	N. Mex.	Albuquerque, N. Mex.	Albuquerque, N. Mex.
Blackfeet	Mont.	Billings, Mont.	Billings, Mont.
Colville	Wash.	Portland, Oreg.	Portland, Oreg.
Crow	Mont.	Billings, Mont.	Billings, Mont.
Hopi	Ariz.	Phoenix, Ariz.	Phoenix, Ariz.
Makah	Wash.	Portland, Oreg.	Portland, Oreg.
Navajo	Ariz., N.Mex., Utah	Window Rock, Ariz.	Window Rock, Ariz.
Papago	Ariz.	Phoenix, Ariz.	Tucson, Ariz.
Warm Springs	Oreg.	Portland, Oreg.	Portland, Oreg.

Data gathered and reviewed at these sites included a sample of contracts from each tribe and associated policies, regulations, guidelines, and procedures for each of the area offices and tribes. The contracts and associated data were generally limited to fiscal years 1978, 1979, and the first three quarters of 1980. Tribal and Government officials and tribal members were interviewed as appropriate.

A total of 178 BIA and 27 IHS selected tribal contracts and grants were reviewed to varying degrees. All 205 with a cumulative award value of $71 million were examined at the agency level for procedural violations, such as awarding a contract after the start date. Thirty contracts or grants amounting to $12.6 million from BIA and $1.4 million from IHS were selected for more detailed examination at the tribal level. These tribes were awarded a total of $107.1 million in contract and grant funds from BIA and $15.6 million from IHS during this period. Factors considered in selecting these contracts and grants were

--their dollar value,

--whether they were current or closed out, and

--whether they represented various types of contract programs.

We did not trace all costs associated with the contracts and grants we reviewed. We also did not conduct an inventory of all Government property funded under the contracts and grants we selected for review. A significant amount of time and staff

resources would have been required for such an effort. Thus we are unable to comment on the validity and appropriateness of all the costs and the accountability of all the Government property associated with the contracts and grants we selected. We did, however, verify the existence of some nonexpendable property and did limited cost tracing on some contracts and grants.

CHAPTER 2

INADEQUATE CONTROLS OVER CONTRACTS AND GRANTS

BIA did not have adequate controls over most of the 178 contracts and grants awarded to Indian tribes which we reviewed. BIA therefore does not know whether the tribes are providing required services to Indians or if Federal funds are being properly expended on some of its grants and contracts. BIA made little progress in resolving many of the problems identified in our February 1978 report. During fiscal year 1978 through June 1980, BIA awarded grants and contracts of about $726 million to Indian tribes. BIA is still

--awarding contracts and grants retroactively,

--not always including adequate performance measurement criteria in grants and contracts, and

--not adequately monitoring its grants and contracts to help identify and improve tribal performance.

BIA was not auditing and closing out contracts and grants in a timely manner and was not making 13 tribes comply with letter-of-credit procedures. As a result, the tribes had cash in excess of their immediate needs and were not submitting timely expense vouchers.

IHS has also been lax in monitoring the 27 grants and contracts we reviewed, and tribal performance has not been evaluated. During fiscal years 1978 through 1980, IHS awarded grants and contracts of about $310 million to Indian tribes.

Some Indian tribes are not properly managing Federal contract and grant funds. As a result there were questionable expenditures, inadequate documentation supporting expenditures, unauthorized transfer of funds between contracts and grants, and poor internal financial controls. In addition, audits by Interior's Office of the Inspector General and certified public accountant (CPA) firms have identified questionable or unallowable costs in tribal contracts and grants with various Federal agencies.

We noted several practices involving grants, contracts, or modifications to existing contracts which we believe should be stopped. They include

--using expired appropriations to fund contracts,

--increasing funding without increasing the amount of services to be provided,

--increasing contract funding levels without the tribes requesting the additional funds, and

--using training and technical assistance grant funds for purposes other than improving tribal management capabilities.

There is a potential conflict of interest between the program-related duties of contract/grant officer representatives and their procurement-related duties of monitoring and reporting on tribal performance on contracts and grants. To correct the situation, an organizational change is necessary; accordingly, we have developed three BIA reorganization proposals for consideration by the Secretary of the Interior.

Tribal property management systems at five tribes or tribal organizations were inadequate or nonexistent. As a result, Federal agencies are unable to determine what Government property is being used by Indian tribes or tribal organizations, and the tribes do not have adequate controls for the Government property in their possession.

Although similar contract and grant administration problems were observed at two other Federal agencies, they were generally not as frequent or severe. Our reports containing numerous recommendations to the Congress, BIA, and other cognizant Federal agencies for improving the administration of Indian programs and resources are summarized in appendix II.

Although Federal agencies have repeatedly advised us and the Congress that actions had been taken or planned to correct the management weaknesses discussed in our reports, such actions were not always taken, were inadequate, or were not implemented on a continuing basis. As a result, many Indians may have suffered needlessly, while costs of administering the programs and services have increased drastically. Unless new alternatives are adopted, mismanagement of programs and services may continue, and improvement of Indians' quality of life will be impeded. We have identified and discussed four alternatives in a prior report. 1/

CONTRACTS AND GRANTS AWARDED RETROACTIVELY

BIA continues to award contracts and grants in which the start date precedes the award date (date of approval). In our February 1978 report we stated that BIA was retroactively awarding contracts and grants by as much as 10 months and that this practice resulted in reimbursements to tribes for expenses incurred before the proposals were approved by BIA. The Department of the Interior generally agreed with our findings and agreed to comply

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1/"Federal Management Weaknesses Cry Out for Alternatives To Deliver Programs and Services to Indians To Improve Their Quality of Life" (CED-78-166, Oct. 31, 1978).

with our recommendation to prohibit the practice of (1) awarding new contracts retroactively and (2) recontracting where there is a long time between the ending date of the old contract and the signature date on the continuation contract. Instructions to this effect were sent to BIA area offices.

BIA, however, did not implement our recommendation. During 1978 through June 30, 1980, BIA awarded 141 out of 175 selected contracts and grants which had start dates which preceded the award date from a few days to about 11 months. Two contracts did not even have a start date listed. Awarding contracts and grants retroactively allows Federal fund payments for tribal services without any Federal control. Further, the contractor--that is, the tribe--is often performing without any legal obligation on the part of the Federal Government to reimburse it for its performance. Good management procedures would dictate that neither the tribe nor the Government be put in this position.

One example of a retroactive award was a BIA grant to the Colville Confederated Tribes to fund an office for developing contracts and grants. On January 23, 1979, the tribe submitted a grant application to BIA. The application proposed that the grant cover the period January 1, 1979, to December 31, 1979. On March 22, 1979, the acting BIA agency superintendent recommended to the area director that the grant be approved with a starting date of January 1, 1979. The grant was signed by the BIA grants officer on May 9, 1979, over 4 months after the grant starting date.

Although the problem was not as severe at IHS, we noted five contracts where the start date preceded the award date from 6 to 31 days.

CONTRACTS AND GRANTS AWARDED WITHOUT ADEQUATE PERFORMANCE MEASUREMENT CRITERIA

BIA is continuing to award vague and poorly written contracts and grants that do not include adequate performance measurement criteria. Without adequate criteria for measuring tribal performance in contract or grant agreements, BIA cannot evaluate program results and properly audit the expenditure of Federal funds.

Our February 1978 report stated that the contracts and grants BIA had awarded to Indian tribes did not always have adequate criteria for measuring tribal performance. Interior replied that our conclusion was correct and that it would direct BIA to include the criteria in the future. Thus, contracts and grants entered into during fiscal year 1979 and subsequent years should have had adequate criteria to measure performance. Accordingly, instructions were sent to BIA area offices.

However, 82 of 178 selected contracts and grants awarded by BIA had criteria which were partially inadequate and 34 had no criteria at all. A contract was considered partially inadequate if a substantial portion of the contract work scope was without

measurable criteria. When contracts and grants lack specific goals and objectives or a detailed work plan for accomplishing them, it is almost impossible to supervise and monitor tribal performance. Similarly, the tribe could have difficulty in complying with such a contract or grant.

For example, BIA awarded a $204,600 employment assistance contract to the Colville Confederated Tribes to furnish all materials, labor, and equipment necessary to operate a direct employment program and an adult vocational training program. Although the contract outlined many steps to be taken and duties to be performed, more would be needed to adequately measure performance. We believe adequate performance measurement criteria should include minimum standards to measure program success. The standards should include such things as percentage of unemployed to be served, specific numbers of untrained individuals to be assisted, and specific percentages of time spent by personnel on various program duties.

Another example of a contract with inadequate performance measurement criteria was one for $142,088 awarded by BIA to the All Indian Pueblo Council for developing and implementing programs to attract industry and commercial activity to the Albuquerque area reservations.

According to the contract, progress and accomplishments were to be measured by periodic review; written reports were to be submitted to BIA after the contract's term. The contract stated that the evaluation was to be based on the degree to which the program met the goals and objectives as set forth by the 19 Pueblo Governors. We believe adequate performance measurement criteria should include such things as quantifiable goals and objectives in the contract itself. Further, we believe the terms of the contract were unclear as to whether (1) the contract's goals and objectives would be set by the Governors at some future point in time and thus were not part of the contractual documents or (2) the goals and objectives were those established in the contract's plan of operation. The goals and objectives in the plan of operation section, however, only restated the purpose of the contract and provided for contacting tribes and others to coordinate projects. In either case we believe progress would be difficult to measure. Also, the contract did not establish minimum frequencies for reviewing progress and accomplishments nor state what information should be included in the reports to be submitted to BIA.

In another case, BIA awarded a $220,200 grant to the Crow Tribe for administrative support services. The grant agreement did not contain performance objectives or criteria for measuring performance. The grant allowed the tribe to hire 15 employees but, according to tribal and BIA officials, did not require them to do anything specific. According to the contract officer, BIA does not know what was accomplished under the grant.

Generalized performance measurement criteria and scopes of work such as the above make performance evaluation difficult or impossible. Interior's Office of the Inspector General found similar problems during a review of self-determination grants. The Office reviewed 183 grants, amounting to about $9 million, awarded by six BIA area offices during fiscal years 1978, 1979, and 1980 and found that 75 were awarded to tribal organizations for purposes that could not be readily determined from the grant agreement. According to the December 1980 report, these purposes either were not stated or were so general or vague that subsequent performance and expenditure of the grant funds could not be evaluated.

For example, the Office of the Inspector General's report stated that:

> "--A grant for $48,846 was awarded with the primary objective 'to initiate a sound court system'. The grant contained no measurable objectives or budgetary information indicating how the funds would be spent. Subsequent grant amendments extended the grant completion date by more than a year without adding objectives or budget data. Through the first 15 months of the grant period, only $16,322 of grant expenditures were reported by the tribe."

BIA AND IHS WERE NOT ADEQUATELY MONITORING CONTRACTS AND GRANTS WITH INDIAN TRIBES

The Indian Self-Determination Act mandates and various Federal regulations and guidelines require that contracts and grants with tribes be supervised and monitored. BIA and IHS contract and grant monitoring, however, has been hampered by part-time supervision, inadequate monitoring of reports, little personnel training, and insufficient auditing.

The contract or grant officer is the BIA or IHS official responsible for awarding and administering contracts and grants. The contract or grant officer usually designates one or more persons to represent and assist him/her in administering the contract or grant. In BIA, the representative is called a contract or grant officer representative, and his/her IHS counterpart is called a project officer. BIA and IHS representatives are usually located at agency field offices near tribal headquarters. Although the representatives are heavily relied upon to enforce the contract provisions and may be delegated certain administrative duties, the contract officer remains the responsible official for ensuring contract compliance.

Part-time supervision

In February 1978 we reported that BIA's contract monitoring practices were ineffective in identifying poor tribal performance or ensuring corrective action. The ineffective monitoring was

due in part to the representatives supervising contracts on a part-time basis.

Supervision and monitoring is still done by BIA and IHS representatives as a part-time, collateral duty. They usually have full-time responsibilities in other BIA or IHS programs with the supervision and monitoring being added to their full-time responsibilities. IHS usually assigns the senior person at a reservation the additional duty of project officer. BIA uses program personnel assigned to the agency office, or in some cases to the area office, as the contract or grant officer representative.

BIA and IHS representatives were generally placing a low priority on the contract supervision and monitoring aspect of their work. They said that they considered their full-time assignments as their top priority and, as a result, did not devote much of their time to contract and grant administration work. To adequately monitor and supervise contracts, they felt that substantially more of their time would be required.

For example, one representative we visited had been assigned to supervise and monitor all BIA contracts (usually about 20) with the Colville Confederated Tribes in addition to his normal duties as the agency's administrative officer and acting superintendent when the superintendent was absent. The representative said that his normal duties took up so much of his time that he could not provide indepth supervision and monitoring for all contracts. Consequently, he was not knowledgeable about contract specifics, such as the the work statement, required products to be produced, or services to be provided, including various studies, manuals, and reports.

Monitoring reports

BIA and IHS representatives seldom prepare contract monitoring reports, and when they do, the reports often do not discuss contractor performance. At two BIA and IHS area offices 34 of the 48 contract files examined had no monitoring reports. Of the 14 monitoring reports that were prepared, only 7 addressed contractor performance.

The contract and grant agreements required the tribes to submit periodic progress and expenditure reports and final performance and expenditure reports. As part of the final performance report, the tribes were sometimes required to submit documents, such as plans or manuals, prepared with contract funds. The tribes did not submit one or more of the required reports and/or documents, or did not submit them in a timely manner, in 7 out of 12 contracts we selected at the Portland area office. In addition, the reports that were submitted often did not provide detailed information on how work was being accomplished.

For example, a $64,000, 15-month BIA grant, ending June 30, 1979, was awarded to the Colville Confederated Tribes. The

tribe was required to submit an expenditure report within 10 days of the end of each month and a progress report within 10 days of the end of each quarter. Final expenditure and performance reports were also required within 90 days of grant completion.

The tribe failed substantially to comply with these reporting requirements. Most expenditure reports covered periods of 2 to 4 months instead of being submitted monthly as required. Further, none of the required quarterly progress reports, the final report, and a planning study had been submitted to BIA at the time of our visit in August 1980.

The tribal geologist said that he had not submitted quarterly progress reports or a final report because he did not know it was a grant requirement. He said that the BIA grant officer representative had done very little monitoring and had not advised him of the requirement. A tribal accountant said that expenditure reports probably were not submitted monthly because there may have been some months in which no expenditures were made. However, a BIA Portland Area Office grant specialist said that the tribe is generally very slow in submitting the required reports and invoices for most of its grants. He said its slowness may be due, in part, to the tribe's receiving advance funds through a letter of credit. He explained that once the funds are received, there is little BIA can do to encourage the tribe to submit its reports.

Little training

While three of the representatives we interviewed said that they had received some formal training, they felt it had not dealt with several important aspects of contract monitoring and that it was not provided frequently enough.

Some representatives said the training was inadequate in such critical areas as the legal aspects of contracting and in what actions the representatives should take if the contractor is not in compliance with the contract. One contract officer representative said that he was uncertain as to how closely he should monitor a contractor because the subject was not adequately covered in the one training session he attended. We noted that the lesson plan for the 2-day course devoted only 30 minutes to the subject of evaluating a contractor's performance.

CONTRACTS NOT AUDITED IN A TIMELY MANNER

Contracts between BIA and Indian tribes were not being audited in a timely manner. For example, since self-determination contracts started in 1975, none have been audited at BIA's Navajo Area Office. There are two main reasons for this situation.

First, closeout procedures, which generally include an audit, have not been established for BIA's Navajo Area Office self-determination contracts. Some effort has been made to establish

them, such as eliminating audits on contracts of less than $50,000, but no overall procedures have been put into effect. BIA Navajo Area Office officials believe that it will be virtually impossible to get the tribes to cooperate with local closeout procedures until they are made part of BIA regulations.

Second, Interior's Office of the Inspector General is unable to audit BIA contracts because of a lack of resources. In January 1980, the chief of contracting services for the Navajo area office wrote the regional audit manager of Interior's Office of the Inspector General requesting audits on 73 contracts totaling about $100 million. The outstanding balance on the letters of credit for these contracts totaled over $22 million. The regional audit manager replied that his office did not have the staff to undertake a job of such magnitude.

We believe audits are necessary to identify disallowable costs and to encourage contractual compliance on the part of tribes. If Interior's Office of the Inspector General does not have the staff resources to ensure that contracts are audited in a timely manner, it needs to consider using CPAs to audit contracts between BIA and Indian tribes.

POOR CASH MANAGEMENT

Prior to 1976, self-determination contracts were funded by quarterly cash advances in amounts large enough to cover the tribes' total expected quarterly expenditures. When the volume of self-determination contracts began to increase, letters of credit were established in an attempt to lessen the cost of financing these contracts. For those tribes having self-determination contracts totaling at least $120,000 yearly, individual letters of credit were authorized from which they could draw money needed for immediate expenditures. Thus, the U.S. Treasury would not have to advance large amounts of unneeded money at the beginning of each quarter and, theoretically, could save substantial amounts of interest on the unused money.

Under the letter-of-credit system, the tribe obtains money on request by submitting a "request for payment" to the appropriate Federal Reserve bank or to a local authorized bank, depending on where its letter of credit has been established. 1/ Once a letter of credit is established for the tribe, the amount is increased when an agency awards it additional contracts or grants. When the tribe requests funds from the Treasury, it identifies which contract or grant (more than one contract or grant can be identified) the withdrawal should be charged against. The Treasury then sends the

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1/Letters of credit for BIA contracts are usually established at Federal Reserve banks.

tribe or its commercial bank a check for the amount of the request and sends a copy of the tribe's request to the appropriate agency.

BIA procedures state that drawdowns should be made for immediate expenditures only and that expense vouchers verifying the expenditures should be submitted by the tribes to BIA within 15 working days after the end of December and June each year.

BIA's Phoenix and Gallup Area Offices were not following the above procedures for tribes in their areas. Examination of the letters of credit reviewed at these locations indicates that the tribes are withdrawing money far in advance of needs and are not submitting expense vouchers in a timely manner. This has resulted in large outstanding balances where expense vouchers have not been submitted, some for as long as 4 years. In spite of direction by BIA headquarters to take specific action against tribes if the outstanding balances are not reduced, these BIA area offices did little or nothing to resolve the matter. Audits by other organizations have found similar problems. These problems are discussed in more detail below.

Large outstanding balances

The letters of credit we reviewed for the Navajo, Papago, and Hopi Tribes revealed that large amounts of money have been withdrawn for which BIA has not received expense vouchers. During June and July 1980, the BIA offices in Gallup and Phoenix audited these letters of credit, among others, and determined that vouchers had not been submitted to account for the following drawdowns:

Outstanding
Letter-of-Credit Balances

Hopi	$ 1,275,317
Navajo	16,637,837
Papago	1,011,702
Total	$18,924,856

Letters were sent to some of the tribes in July notifying them of the magnitude of outstanding balances due and requesting that immediate steps be taken to rectify the matter. Some vouchers were submitted, but as of September 1980, the amount of the outstanding letter-of-credit balances had not been reduced much. Although most of the outstanding funds were withdrawn in fiscal year 1980, about $5.9 million was a year or more old and some drawdowns were as much as 4 years old.

In June 1980, the BIA Commissioner directed all BIA area directors to immediately notify delinquent tribes that they had 30 days to reduce their outstanding letter-of-credit balances. After 30 days, a bill of collection was to be issued. After 30 more days, the matter was to be referred to the Commissioner for

final resolution. Further, and more importantly, the Commissioner stated that where a tribe is continually delinquent in submitting expense vouchers to BIA, it shall be notified that it has 30 days to act on the delinquency or the letter of credit will be canceled.

Phoenix area office officials had taken preliminary action on the first two steps but had not turned over any matters to the Commissioner for resolution. No attempts had been made to terminate the Papago and Hopi Tribes' letters of credit even though they have been continually delinquent for as many as 4 years.

At the Navajo area office, the situation was even worse. The finance officer and contracting officer said that they had never seen the Commissioner's directive, and the assistant area director said that he thought he may have seen it once but was not familiar with it.

Below is the outstanding letter-of-credit balance as of September 1980.

Year contract completed	Outstanding balance due			
	Hopi	Navajo	Papago	Total
1976	$ -	$ a/17,299	$ -	$ 17,299
1977	24,954	68,571	a/226,695	320,220
1978	365,209	215,359	a/180,588	761,156
1979	251,269	4,460,264	a/64,834	4,776,367
1980	318,781	11,485,875	298,298	12,102,954
Total	$960,213	$16,247,368	$770,415	$17,977,996

a/No change from the previous BIA audit done during June and July 1980.

Overdrawn contracts

The Navajo Tribe had withdrawn about $400,000 from its letter of credit in excess of the total amount authorized under three contracts with BIA. According to BIA's finance officer, the Treasury Department keeps records only on the total amount of the letter-of-credit, which may cover several contracts, not on how much has been drawn against each individual contract. Therefore, the letter-of-credit procedures allow a tribe to withdraw as much as it wishes against any one contract as long as the composite total--funds available from all grants and contracts--does not exceed the total amount of the letter of credit. As with any withdrawal, BIA would not know that a tribe had exceeded the amount authorized by the contract until the Treasury sends it a copy of the withdrawal request. At this point a tribe would already have the funds in its possession or have spent the funds. This situation does not give the Federal Government adequate control of its funds because the procedures do not prevent unauthorized withdrawal

of funds and provide only for identifying the improper withdrawal of funds some time after it has already happened.

Although the tribe's $400,000 overwithdrawal occurred more than a year before our audit in August 1980, the finance officer and the assistant area director said that they were unaware that the tribe had withdrawn more funds than authorized by the three contracts. The contracting officer said he thought an overwithdrawal had occurred but he did not know what should be done about it.

Other letter-of-credit audits

Our concern over the manner in which the letters of credit are being handled by the tribes is supported by an Interior Office of the Inspector General's audit at BIA's Billings Area Office and by a public accounting firm's audit of an Indian farm operation.

In 1980 a private accounting firm audited a Navajo farm project. The firm examined the farm's financial statements to evaluate the accounting control system. The firm noted irregularities in the manner in which money was being withdrawn from federally financed programs. According to the audit report certain cash reimbursements for Federal grant programs were received "well in advance of disbursement requirements in 1979." 1/ The report also stated that receipt of such reimbursements in advance appeared to be contrary to detailed grant provisions.

The Office of the Inspector General's report on BIA's Billings Area Office showed serious problems in the area office's management of its letters of credit. The Office of the Inspector General found that:

--Eight of 10 tribes or tribal contractors whose letters of credit were reviewed had not submitted expense vouchers for 40 percent or more of the amount withdrawn.

--Of 11 organizations operating under letters of credit, only 3 were reasonably current in providing expense vouchers.

Treasury guidelines require a review of the use of letter-of-credit funds at least quarterly. Interior's Office of the Inspector General found that the Billings area office was neither making the review nor obtaining the data it needed for effective letter-of-credit monitoring. The report also showed that of the $24.6 million in letters-of-credit drawdowns between fiscal year 1977 and June 30, 1979, $13.4 million (55 percent) was still outstanding on August 31, 1979. In 1976 Interior's Office of the Inspector

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1/ Emphasis added.

General reported that the Billings area office had $1.3 million outstanding advance payments that were over a year old and for which expense vouchers had not been submitted. In August 1979, the amount outstanding had risen to over $2.2 million.

The above facts indicate an abuse of the letter-of-credit system which circumvents its intent. We are currently performing a comprehensive review of BIA's financial accounting system which addresses, among other things, system design and operating weaknesses affecting BIA's accountability over and cash management for contracts and grants.

TRIBAL FINANCIAL MANAGEMENT

Some Indian tribes are not properly managing Federal contract and grant funds. As a result there were questionable expenditures and reimbursements, inadequate documentation supporting expenditures, unauthorized transfer of funds between contracts and grants, and poor internal financial controls. Audits by Interior's Office of the Inspector General and audits by CPA firms have identified questionable or unallowable costs in tribal contracts and grants with various Federal agencies.

For example, an April 1980 audit of the Rosebud Sioux Tribe by Interior's Office of the Inspector General questioned about $1.6 million of costs and disallowed about $575,000. Letter-of-credit funds drawn in excess of needs, billings in excess of actual expenditures, salaries of employees not covered by the contract, and unallowable interest charges were disallowed.

The audit report described the tribe as an inept contract administrator. It said that the tribe cannot keep track of its funds, cannot effectively manage resources to provide continued program operation, and ignores contract terms and applicable regulations. It described the tribe's cash management methods as based on the principle of spending whatever funds were available whenever it wanted, and for whatever purposes it desired, regardless of the original intent for the funds.

A December 1979 audit of the Omaha Tribe of Nebraska, also by Interior's Office of the Inspector General, questioned about $594,000 of costs and disallowed about $172,000 for such things as improper use charges, duplicate charges, overcharges, undocumented costs, and improper equipment leasing.

Another Interior Office of the Inspector General audit of two BIA contracts with the Crow Tribe questioned $36,219 of the costs. Three other audits by a CPA firm reported serious problems in the tribe's financial management system. The audits were of a Department of Energy weatherization grant for about $87,000 that had over 80 percent of the costs questioned; a Community Services Administration weatherization grant for about $40,000 that had over 65 percent of the costs questioned; and a Department of

Housing and Urban Development community development block grant for about $290,000 that had over 55 percent of the costs questioned.

Navajo Community College audit

Our March 1980 audit of the Navajo Community College 1/ disclosed that the college was apparently overfunded by over $3 million for fiscal year 1980. The overfunding involved a change in the methodology used to determine community college funding levels; the methodology had become effective at the beginning of fiscal year 1980 but was not used. For fiscal year 1980 the college requested and received $6.4 million.

After the regulations implementing the Tribally Controlled Community College Assistance Act were developed, BIA recomputed the college's funding level and determined it to be $2.5 million. Therefore, the college owed BIA the difference, about $3.9 million. Our audit to determine the proper funding level basically upheld BIA's position except that, in applying the formula for determining full-time equivalent students, we arrived at a slightly higher level than did BIA. In either case, the college was apparently overfunded by over $3 million.

During our previous audit, we discussed the matter of overpayment with the Deputy Assistant Secretary for Indian Affairs. The Deputy Assistant Secretary told us that BIA had no intention of recovering the overpayment.

Improper expenditures under contracts and grants

Although we did not make a complete financial review for all of the contracts and grants examined, we did identify some questionable or improper expenditures.

For example, we traced 51 travel transactions on a BIA tourism contract with the Navajo Tribe. Examination of the $8,350 travel expenditures charged to that contract indicated that $2,205 was disallowable and $628 was questionable. The expenditures were disallowable or questionable because they were unnecessary, unauthorized by the contract, or could not be related to the contract's purpose.

Examples of some of the questionable or disallowable expenditures are:

--A staff member hand-carried a purchase order from Window Rock to a printer in Albuquerque. He then picked up other

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1/"Navajo Community College Funding Problems" (CED-80-79, Mar. 21, 1980).

preprinted material and stayed the night in Albuquerque. We question the need to hand-carry the order to Albuquerque. Cost: $92.58.

--Three staff members traveled to the Papago Reservation and spent one day looking at housing. Since housing was not related to the contract, we believe the trip cost of $533.87 is disallowable.

--A staff member traveled about 30 miles to attend a seminar not related to the tourism contract. When the seminar was over he stayed the night rather than driving the 30 miles home. We question the cost of the seminar as well as the need to spend the night. Cost: $67.13.

--A staff member drove to Phoenix to attend a Department of Housing and Urban Development forum. Since attendance at this forum was not authorized by the contract, we believe the trip cost of $236.97 is disallowable.

BIA Gallup Area Office officials said they were aware of improper charges that occur at various times on tribal contracts but that contract officer representatives do not have the time or the resources to check every voucher sent in by the tribes. They said that this situation will probably continue as long as contract officer representatives have duties other than contract administration.

Finally, we question part of a 1979 BIA grant for $92,000 to the Confederated Tribes of the Warm Springs Reservation. The grant was to fund the completion of several administrative projects. The tribes were to submit written documents, such as plans and a manual, in relationship to these projects. The grantee subsequently used the funds to pay the salaries of four planning department and contract and budget office employees who were supposed to complete the projects. Although the personnel assigned to the projects did work on them, we were told by tribal representatives that a substantial amount of the employees' time was spent on normal departmental activities. The expenditures for the amount of time each employee was not working on the grant projects are questionable.

Funds transferred between programs

Interior's Office of the Inspector General audited 50 BIA contracts and grants with the Rosebud Sioux Tribe totaling more than $9 million and covering fiscal years 1977 through 1979. It reported that the tribe's primary method of obtaining working capital was to transfer funds between programs. It found over 2,300 transfers involving over $22 million, with amounts ranging from 78 cents to $150,000. The transfers were by verbal request to the bank to move funds from one of more than 45 accounts to another, by tribal checks written from one program to another,

and by Government checks intended for one program being deposited into another program's account.

An Interior Office of the Inspector General audit of BIA contracts and grants with the Omaha Tribe of Nebraska in December 1979 concluded that internal control over tribal financial operations is not adequate to ensure that Federal funds are spent for the purposes intended. It reported that the tribe used Federal funds to make loans to other tribal accounts and tribal members and failed to record these loans in a manner which would facilitate identification and collection.

QUESTIONABLE PRACTICES

We noted several practices involving grants, contracts or modifications to existing contracts which we believe should be stopped. These include

--using expired appropriations to fund contracts,

--increasing funding without increasing the amount of services to be provided,

--increasing contract funding levels without the tribes requesting the additional funds, and

--using training and technical assistance grant funds for purposes other than improving tribal management capabilities.

Contracts funded with expired appropriations

A basic rule on obligating appropriations is set out in 31 U.S.C. 712a, which provides that

> "Except as otherwise provided by law, all balances of appropriations contained in the annual appropriations bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year."

In interpreting this provision, we have held that in order to obligate a fiscal year appropriation for payments to be made in a succeeding year, the contract not only must have been made within the fiscal year to be charged, but it also must have been made to meet a bona fide need of the fiscal year to be charged. Generally, we have found that a bona fide need for services does not arise until the fiscal year in which the services are rendered. The exception to this would appear to be where it is not feasible to divide the contract between fiscal years--for example, where the services are a part of a contract for an end product and the need for the services thus coincides with the need for the product.

BIA approved a contract modification and IHS approved five contracts with expired appropriations. The details of these contracts follow.

BIA's Gallup Area Office approved a $1.1 million modification to the farm management service contract on September 25, 1979, 3 working days before the close of fiscal year 1979. Most of the work utilizing the $1.1 million obligated in fiscal year 1979 was done and paid for in fiscal year 1980. We discussed the matter with the contracting officer and the assistant area director at Gallup and were told that the contracting officer at the time of the modification was no longer with BIA's Gallup Area Office. The current contracting officer said the transaction should not have taken place.

IHS' Billings Area Office awarded five contracts totaling about $370,000 with expired appropriations.

Two examples of these contracts are:

--An ambulance service contract for $99,801 was awarded on October 10, 1978, using fiscal year 1978 funds. (The Federal fiscal year 1978 ended on Sept. 30.) The period of performance using the 1978 funds was September 30, 1978, through September 30, 1979. This was extended by modification for another $99,801 to September 30, 1980, using fiscal year 1979 funds.

--A psychiatric service contract for $28,525 was awarded on September 28, 1979, using fiscal year 1979 funds. The period of performance was September 30, 1979, through September 30, 1980.

The Director of the Billings area IHS said that his office receives direction and advice from IHS headquarters and has followed its direction in utilizing available funding.

Contract modifications awarded without increasing services

We examined 66 contracts and determined that in four cases, about $162,124 was added to contracts without a corresponding increase in the work statement or in the amount of services to be provided.

For example, BIA awarded a $25,000 contract to the Warm Springs Tribes to arrange and conduct a nationwide Indian timber symposium. The contract was modified in September 1979 by an additional $8,000. The increase was justified on the basis that costs had been underestimated. However, the modification did not increase the amount of services to be provided and did not explain why the costs had been underestimated.

In another example, BIA entered into a $129,419 contract with the Colville Confederated Tribes to provide an adult education program. A modification was awarded 6 days before the end of the contract period to add about $9,000. The increase was for training assistance to students who enrolled in summer courses in area colleges. Although the work statement was expanded, justification for the increase was never documented, and a November 29, 1979, financial audit showed that only about $3,193 of the additional funds was used. Since the summer courses were completed by the time the modification was approved, and only about one-third of the budget was used, it appears that the modification should not have been approved. The contracting officer agreed that it should not have been approved, but the lack of contracting office staff did not allow enough time to adequately review all modification requests.

Contract modifications awarded without requests from tribes

In nine instances contracts were modified to increase funds without any apparent need or request from the tribe. In three of the nine contracts, BIA headquarters notified the area office that $3.9 million was available for various program areas. The area office then added this amount to the contracts. In another case BIA sent a letter informing the contractor that an additional $1,541 was available. The contractor then asked to have his contract modified for that amount even though there had been no previous indication of a need for these funds. In two other instances amounting to $17,000, the contract files contained no information on the increase other than the general statement that the purpose of the modification was to increase the contract dollar amount.

We also noted a questionable yearend contract. BIA awarded the Papago Tribe a $20,000 contract to develop a farm. The contract requirements were far in excess of what could be provided for $20,000. Three months later, however, BIA increased the contract by $1 million and, at the same time, significantly reduced the scope of work. The contracting officer said that only $20,000 had been awarded initially because that was the sum available for the project in that fiscal year, but the contract's scope of work had not been adjusted accordingly. After funds became available in the new fiscal year, the contract's scope of work was amended to consider what could be provided at the new funding level.

We had previously noted questionable yearend spending by BIA. In a July 1980 report 1/ on yearend spending practices, we told the Congress that a BIA area office had improperly obligated

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1/"Government Agencies Need Effective Planning To Curb Unnecessary Year-End Spending" (PSAD-80-67, July 28, 1980).

over $1.1 million in its rush to obligate excess funds before they expired. The area office had made purchases without a bona fide need, added funds to contracts without a request from the contractor, and funded contracts with expired appropriations. For example:

--A purchase order was issued on September 27, 1979, for $109,025 to purchase 18 gas and 10 electric golfcart-type vehicles. The order was issued without any documentation of current need.

--A modification for $140,000 was awarded on September 19, 1979, without increasing the goods or services and without a request from the contractor or any other evidence of a bona fide need.

--A modification for $50,000 was awarded on December 14, 1979, effective October 1 to 30, 1979, but used expired fiscal year 1978 funds instead of fiscal year 1980 funds.

Timber stand improvement contract

BIA has been awarding contracts for several years to the Confederated Tribes of the Warm Springs Reservation to manage and operate a timber stand improvement program. The primary objective of the program has been to thin out some trees on overstocked land to increase the remaining trees' growth rate.

The thinning, however, was costing substantially more than had been expected because, according to BIA forest management personnel, the tribe was subcontracting the work to tribal members and the costs were not always determined through "arm's-length" transactions. According to the contract officer representative, the tribe was reaching individual agreements with each of the subcontractors instead of using competitive bids. About 8 months before the end of the contract, BIA essentially took over the thinning program and instituted competitive bidding. Since then the work has progressed at an estimated 30 percent cost reduction.

In February 1980 BIA agreed orally with the tribe for BIA to essentially take over complete control of the program. Under this arrangement, the tribe's role was limited to paying subcontractors who do the work under BIA supervision. Despite the tribe's limited role, BIA continues to contract with it for the timber stand improvements. The latest contract for $515,000 is for the 15-month period from July 1, 1980, to September 30, 1981. The tribe is to receive $70,000 in indirect costs for the initial 6 months and, potentially, an additional $106,000 (39 percent of the remaining contract value) in indirect costs for the last 9 months, even though it is incurring few indirect costs because of its limited role in the program. The contract officer representative told us that BIA was continuing to contract with the tribe for the program because the tribe wishes to continue doing so and it would be difficult to refuse since it has been

cooperative in other aspects of BIA's forestry program. Portland area office officials stated that the contract would be reviewed to determine whether it should be canceled or the tribe's responsibilities increased.

Seismic survey grant

BIA awarded a self-determination grant to the Colville Confederated Tribes in the initial amount of about $36,000 to gather basic geological data on the reservation's mineral resources and analyze it for resource planning purposes. The grant was later amended and funds approved in the amount of $10,000 for a seismic survey to locate a potential water source for an addition to the tribe's water system.

BIA's approval of this survey appears questionable because the survey is only remotely related to the legislative objectives of the self-determination grant program--assisting tribes to improve their self-governing capabilities and to enhance their abilities to effectively administer federally funded programs under contracts or grants. Locating a water source would do little if anything to further these objectives. The assistant area office director said that approving the seismic survey may have been stretching BIA's guidelines but that it was related to the tribal office building addition. We fail to see how locating a water source relates to an addition to an office building.

NEED TO SEPARATE PROCUREMENT AND PROGRAM FUNCTIONS

We noted a potential conflict of interest between the program-related duties of contract/grant officer representatives and their procurement-related duties of monitoring and reporting on tribal performance. In our opinion, these problems stem from the manner in which BIA is presently organized; that is, contracting officers and contract/grant officer representatives are responsible for carrying out the procurement function but are supervised by program-oriented personnel. We believe an organizational change is necessary and, accordingly, are presenting several alternatives for reorganizing BIA. (See p. 27.)

Potential conflict of interest exists due to merging program and procurement functions

In BIA the contracting officers at the area offices are subordinate to the area directors. Contracting officers therefore are reporting to people whose primary responsibility is managing programs. This situation presents a potential conflict of interest due to the overlapping of the procurement and program functions.

"Wearing two hats" can cause certain conflicts of interest between a representative's primary responsibility to program functions and his/her contract monitoring activity, which is a

procurement function. One contract officer representative with program responsibility for social services said he could not function effectively as a contract officer representative and still satisfy his objectives as a technical advisor and an advocate of the tribes. He felt that in his primary duties he acts as an advocate of the tribe and must seek its trust and confidence, while in his role as contract officer representative he is more like a policeman representing BIA.

One contract officer representative was quick to point out that his primary responsibility (his job) was subject to self-determination by the tribe. Under the self-determination act, as discussed in chapter 1, the tribe may request to contract with Interior to plan, conduct, and administer programs or program segments which BIA is authorized to administer for the benefit of Indians. Therefore, should he become "hard nosed" about his contract officer representative duties, the tribe could effectively eliminate him by contracting for his primary responsibilities. He has been able to maintain harmony between the two roles by being "reasonable" as a contract officer representative so that the situation is hypothetical at this point. However, should a problem arise on a contract for which he is the representative, he believes the tribe could decide to contract for his responsibilities and he would lose his job.

The Commission on Government Procurement created by Public Law 91-129 in November 1969 stated, in its December 1972 report to the Congress:

> "Technical personnel tend to dominate personnel engaged in the procurement process. Procurement personnel do not receive the management support they must have in order to bring their professional expertise into play in awarding and administering contracts and, as a consequence, they must often bow to the desires of requisitioners who do not have expertise in procurement."

The Commission recommended that the contracting officer be "the focal point for making or obtaining a final decision on a procurement."

The Commission also criticized the practice of having the head of procurement report to someone other than the head of the agency. Where the procurement chief is removed from the agency head, the commission found that "little direct top management attention is devoted to procurement or grant problems and the lack of understanding of the importance of the procurement function by agency heads is apparent." The Commission further stated that, if the procurement function is to operate effectively, it must be placed at a level in the organization that makes it highly visible to the agency head. The chief of procurement in BIA does not report to the agency head. (See chart 1 on p. 29.)

BIA regulations implementing self-determination also recognize the conflict between contracting and program administration in that

> "Contracting by its very nature places Bureau officials in the dual position of assisting Indian tribes, in many instances, by furnishing technical assistance in preparation of contract proposals, and of carrying out their fiscal and administrative responsibilities as officials of the Federal Government. It is recognized that very often these two positions are in opposition to each other."

Conflicts in administering the Self-Determination Act

The Self-Determination Act permits tribes to contract for the performance of personal services which would otherwise be performed by Federal (BIA) employees. In a prior report 1/ we stated that we believed that the Congress expected that, as Federal control of programs and services shifted to the tribes through the increased use of self-determination contracts, it would be accompanied by a decrease in Federal employees (BIA), though it may not be on the basis of one-for-one.

This situation presents a dilemma or inherent conflict for BIA employees who, if they are successful in implementing self-determination, may well be eliminating their own jobs. Therefore, it is not in the BIA employees' best interest to encourage tribes to use self-determination contracts since by doing so they may be putting themselves out of a job.

In order to provide a better opportunity for successful implementation of Indian self-determination, we believe that BIA needs a separate office with the mission of helping those tribes that want to operate their own programs. The personnel in this office would be more inclined to actively work toward achieving self-determination objectives because their jobs would not be eliminated as tribes increase their use of self-determination contracts and operate more and more programs themselves.

Proposed organizational changes

In view of the conflicts of interest, the pressures being put on the contracting officers, and the findings of the Procurement Commission, we are proposing some organizational changes that are designed to increase the independence of the contracting function and reduce undesirable pressures and conflicts of interest.

1/"The Indian Self-Determination Act--Many Obstacles Remain" (HRD-78-59, Mar. 1, 1978).

These proposals are also designed to enhance achievement of the goals and objectives of the Indian Self-Determination Act. The proposals follow.

Proposal 1

Establish an independent Office of Contracts and Grants Administration reporting directly to the Assistant Secretary for Indian Affairs with a review panel monitoring contracts over $100,000. The purpose of the office would be to ensure that BIA and the tribes are complying with all applicable procurement laws and regulations. The review panel could be made up from the Office of Policy, Budget, and Administration; the Office of Education Programs; the Bureau of Indian Affairs; and the Office of Contracts and Grants Administration. The panel could report to the Assistant Secretary for Policy, Budget, and Administration. (See chart 2 on p. 30.)

The purpose of this proposal is to eliminate or reduce the direction from area office directors on contracting officers, provide for independent supervision and monitoring of tribal performance under grants and contracts, and establish full-time contract administrators at the agency level.

Proposal 2

In addition to Proposal 1, establish a separate Office of Self-Determination directly under the Assistant Secretary for Indian Affairs. The purpose of the office would be to perpetuate the goals and objectives of the Indian Self-Determination and Education Assistance Act. (See chart 3 on p. 31.)

The purpose of this proposal is to eliminate the inherent conflict between the Bureau of Indian Affairs and the goals and objectives of the Self-Determination Act, and facilitate self-determination and enhance the probability of its success.

Proposal 3

Modify Proposal 1 by having the Office of Contracts and Grants Administration directly under the Assistant Secretary for Policy, Budget, and Administration. (See chart 4 on p. 32.)

The purpose of this proposal is to give greater independence to the Office of Contracts and Grants in supervising and monitoring tribal grants and contracts.

CHART 1

CURRENT CONTRACT AND GRANT LINE AUTHORITY

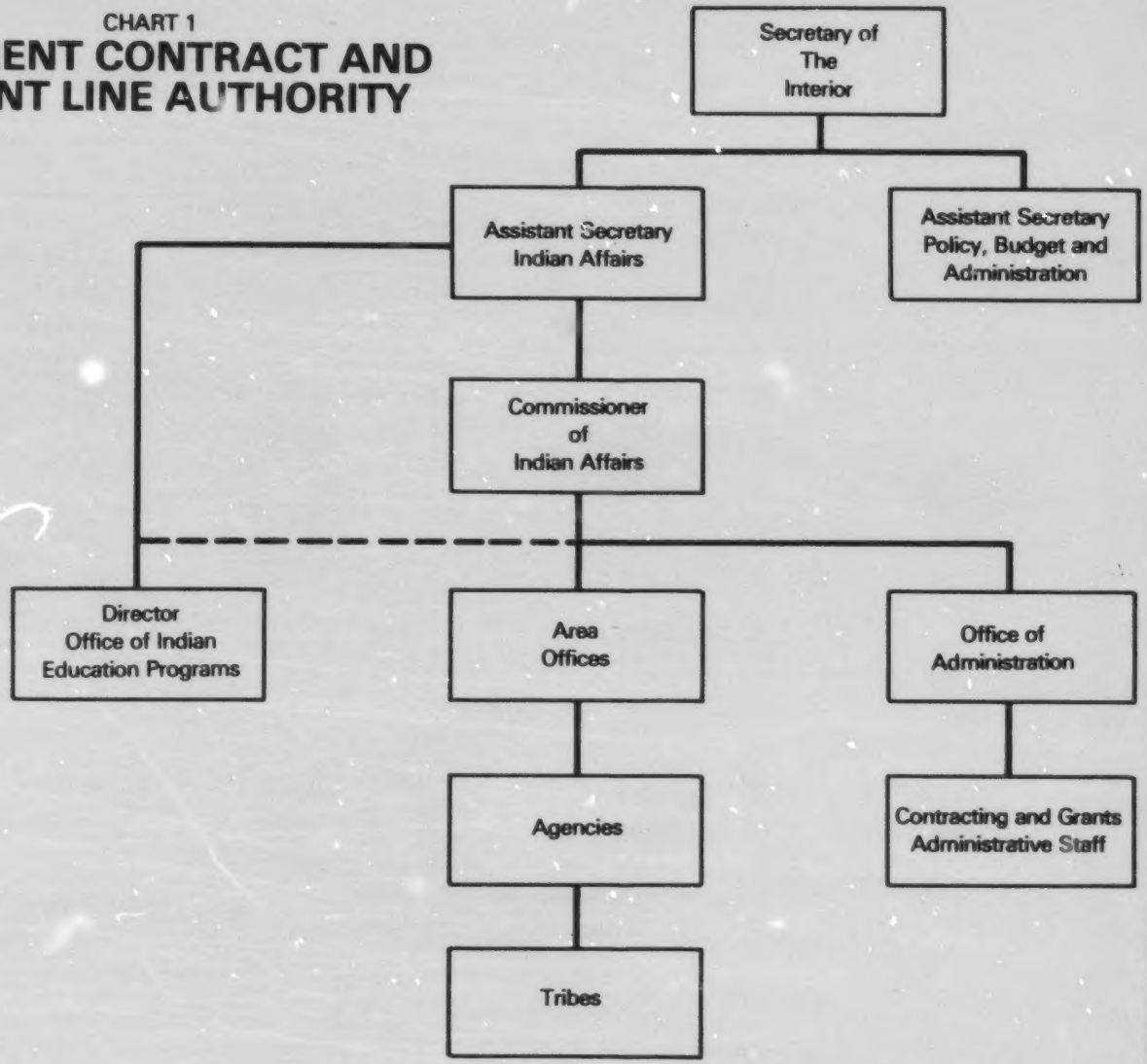


CHART 2

PROPOSAL #1 CONTRACT AND GRANT LINE AUTHORITY

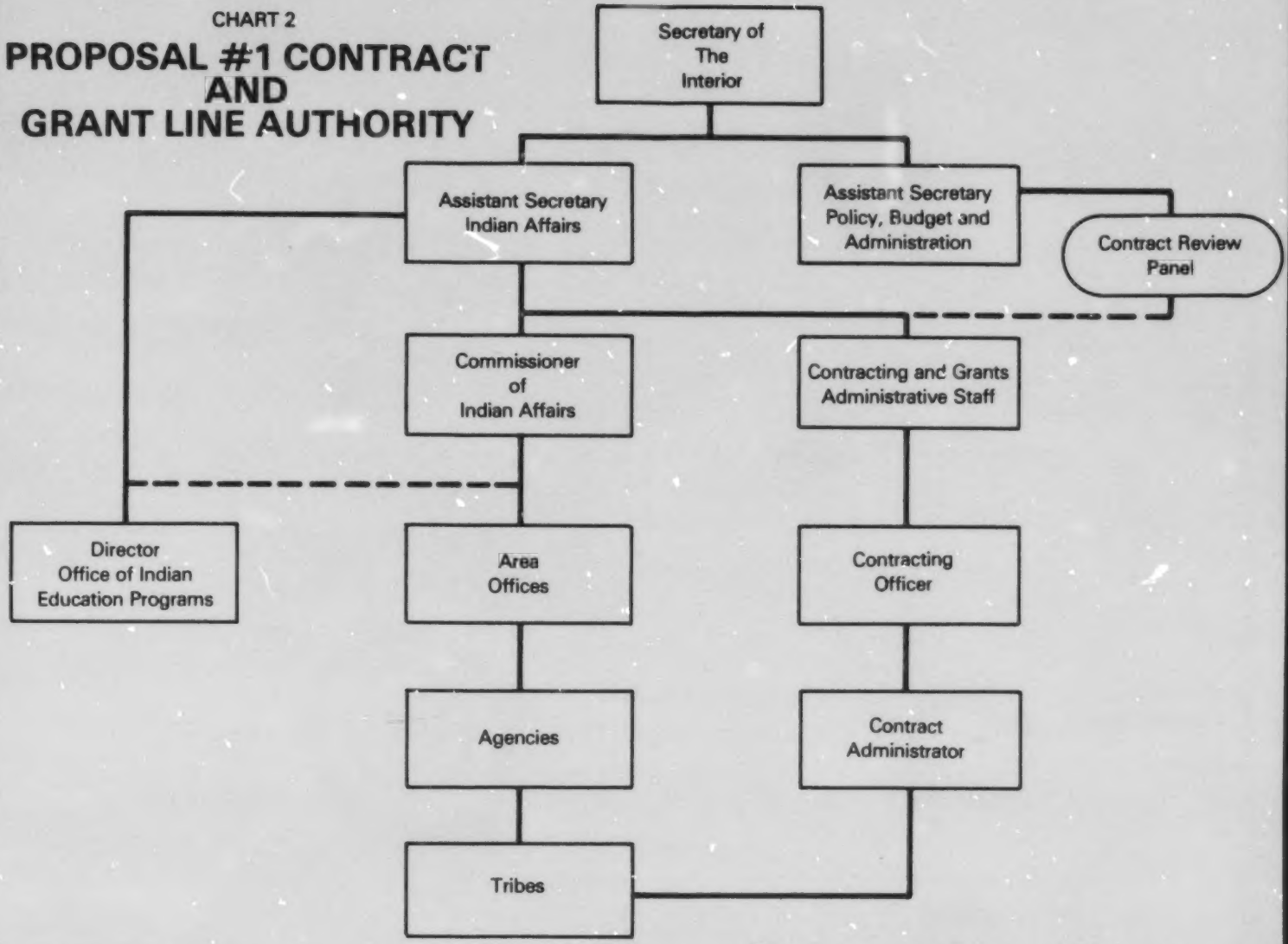


CHART 3

PROPOSAL #2 CONTRACT AND GRANT LINE AUTHORITY

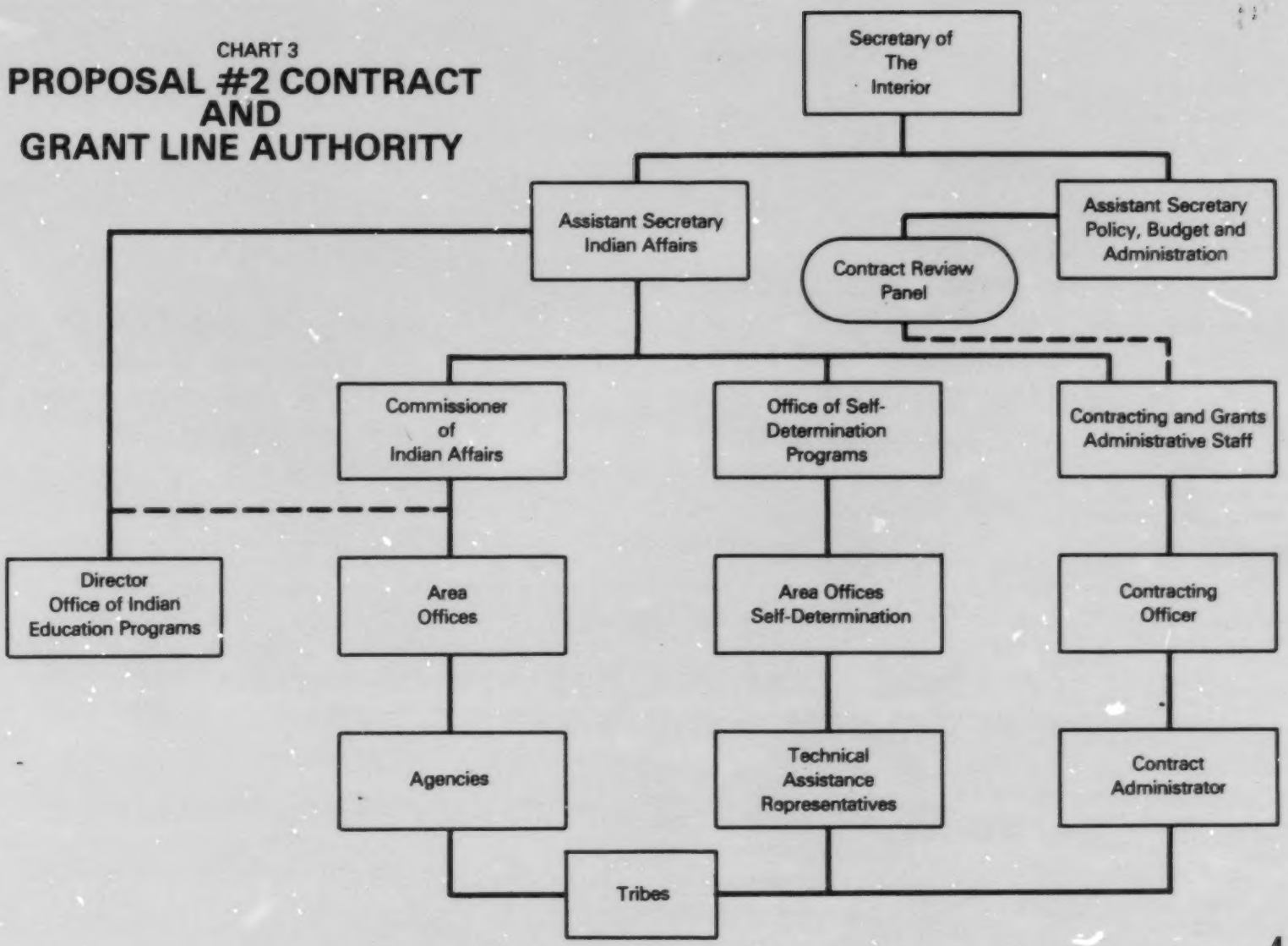
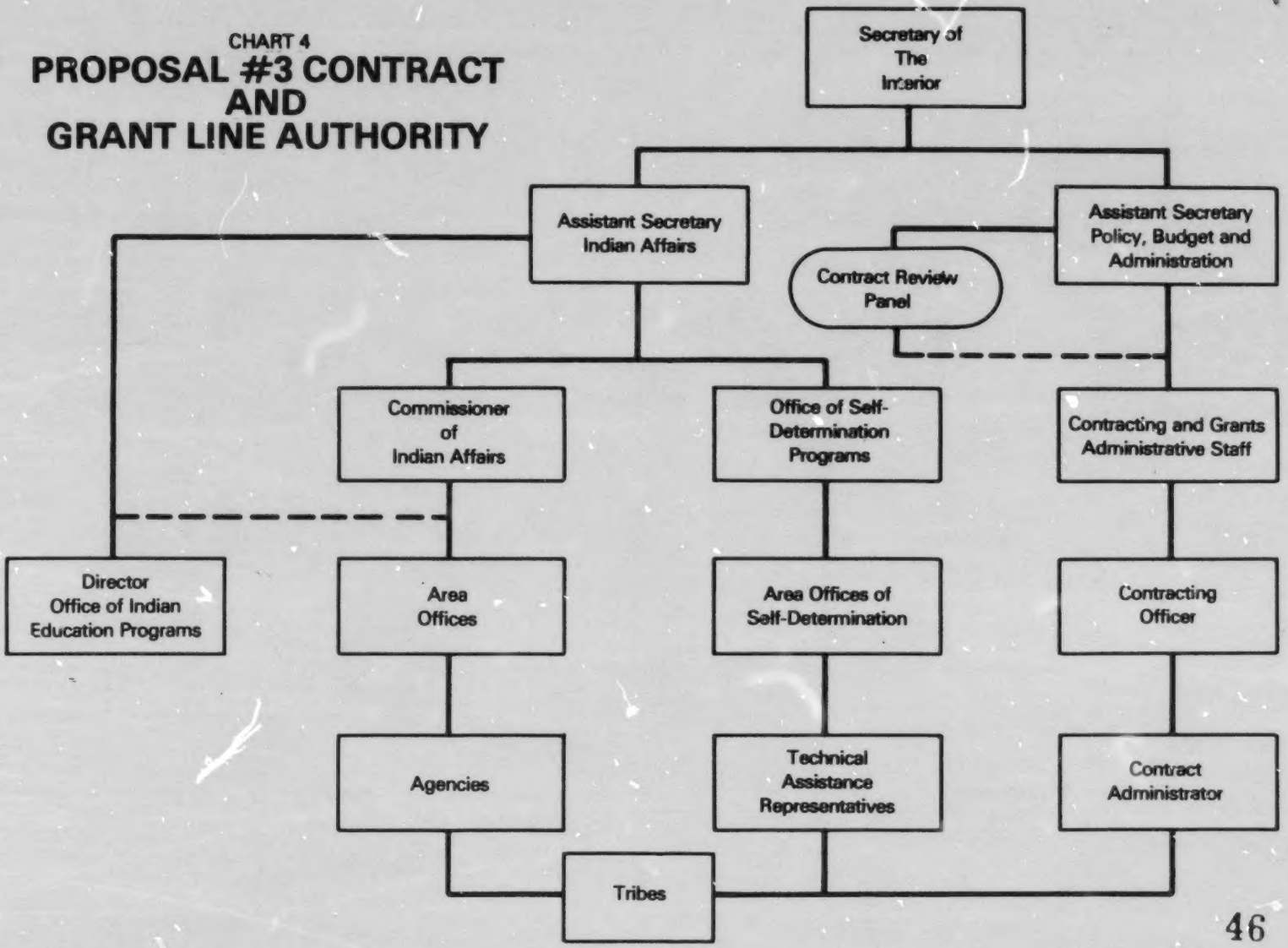


CHART 4

PROPOSAL #3 CONTRACT AND GRANT LINE AUTHORITY



INADEQUATE MANAGEMENT AND CONTROL OF GOVERNMENT PROPERTY

Property management systems were examined at nine tribal organizations and in five instances were found to be inadequate or nonexistent. As a result, Federal agencies are unable to determine what Government property is being used by these Indian tribes, and the tribes do not have adequate controls for the Government property in their possession.

Federal regulations require a satisfactory system for managing property and keeping records. Indian Self-Determination Act regulations require, as part of a contract application, a proposed property management system or agreement to establish one within 90 days of contract execution.

For example, the All Indian Pueblo Council's property management system is not being properly managed and consequently is of little use in controlling Government property. The system is not up to date and is incomplete. In December 1979, for example, 42 items were purchased for $8,000 under a BIA contract; as of September 1980, these items had not been entered into the system because property is recorded as it is used under a contract or grant.

In another example, the Makah Tribe purchased property under one of the contracts we reviewed but had not used proper procedures to account for it. For example, over $4,000 worth of diving equipment had been purchased with contract funds but had not been recorded in the tribe's equipment inventory or tagged as Government property.

BIA contracting office staff in Portland agreed that the tribes were not always maintaining proper inventory records of accountable Government property. They said that, due to a shortage of contracting office staff, reporting and inventorying purchases of accountable Government property had been inadequate at the tribal level.

In another example, the Papago Tribe's property management system was inadequate. It appeared that little or no control was maintained over Government property assigned to a Tribal Work Experience Program or to a children's home. The inventory list for the work program had not been updated since 1974. The contracting officer representative for the program said that a recent inventory had been taken but the results had not been forwarded to him.

The contracting officer representative for the children's home said that no Government property had been assigned to or purchased for the home. However, we were told by the home's director that a couch and chair set worth about $300 had recently been purchased with BIA funds and that its purchase record and accountability should be available through the contracting officer representative. When informed of this, the contract officer representative said he had not been told of the purchase.

OTHER FEDERAL AGENCIES

Although similar problems with contracts and grants were observed at other Federal agencies, they were generally not as frequent or severe. Some problems, however, were identified.

For example, the Economic Development Administration awarded a $575,000 grant to the Colville Confederated Tribes to build a convalescent center. The center was virtually completed in January 1979, but was not in use at the time of our visit in August 1980 because certain safety features had not been incorporated. When the facility was built, the tribe had not adequately considered minimum building requirements, and the Economic Development Administration had not adequately monitored and supervised the project. Tribal officials told us that they had anticipated that the IHS would make funds available to the tribe to operate the facility under contract once it was completed. However, when the facility was completed, the tribe found that IHS did not have funds available for this purpose.

The tribe then applied for Medicaid funding, which required a Federal/State inspection of the facility. When the facility was inspected, it was found to be deficient in several safety aspects, including the lack of a sprinkler system, fire dampers in the ceiling, and fire partitions. The facility therefore could not qualify for Medicaid funding until the deficiencies were corrected. The tribe had considered such safety features in the initial design phase, but they were deleted in order to keep the facility's cost in line with the grant amount.

An Economic Development Administration official said that the Administration may not have made an indepth review of the center's plans and that site visits during the construction of the center might have disclosed the safety problems at an earlier date.

CONCLUSIONS

In the 3 years since our February 1978 report, BIA has done little to improve its control over contracts and grants with Indian tribes. BIA has entered into contracts with inadequate criteria for measuring performance and ones in which the starting dates preceded the award date. BIA and IHS contract and grant agreements are vague and poorly written to the point that compliance is difficult and enforcement is almost impossible. Further, BIA's procedures and practices were not effective in identifying and correcting poor tribal performance.

Some Indian tribes are not following letter-of-credit procedures; they are withdrawing money far in excess of immediate needs and are not submitting timely expense vouchers. Further, grants and contracts with Indian tribes are not always being audited in a timely manner by BIA because of limited staff. Financial audits of tribes could be done by CPA firms.

We noted several practices involving grants, contracts, or modifications to existing contracts which we believe should be stopped. These include

--using expired appropriations to fund contracts,

--increasing funding without increasing the amount of services to be provided,

--increasing contract funding levels without the tribes requesting the additional funds, and

--using training and technical assistance grant funds for purposes other than improving tribal management capabilities.

There is a potential conflict of interest between the program-related duties of BIA contract/grant officer representatives and their procurement-related duties of monitoring and reporting on tribal performance. These conflicts stem from the manner in which BIA is presently organized. Program and procurement functions are not separated, which does not provide for effective internal control.

The inadequate or nonexistent property management systems used by five of the Indian tribes we visited indicated a lack of control of Government property being used by them on Federal contracts and grants.

RECOMMENDATIONS

We are repeating the substance of our prior recommendations to the Secretary of the Interior that the Assistant Secretary for Indian Affairs be directed to revise BIA policies, procedures, and practices to:

--Require that all contract and grant agreements include specific criteria against which to measure performance.

--Terminate a contract or grant where tribal performance constitutes grounds for termination under the pertinent statute.

--Prohibit award of contracts in which the starting date precedes the date of award.

--Enforce compliance with the letter-of-credit procedures. This should include (1) precluding tribes from obtaining cash in excess of their immediate needs, (2) requiring the tribes to submit timely expense vouchers, and (3) revoking the letter-of-credit authority for tribes that fail to comply with the letter-of-credit procedures.

--Require monitoring of tribal letter-of-credit withdrawals on each contract or grant to ensure that a tribe does not

withdraw more than the amount authorized by the contract or grant.

--Require BIA to arrange with CPA firms for annual financial audits of contracts and grants with Indian tribes.

--Prohibit, where no law specifically permits carryover of funds, the practice of using prior fiscal year funds to pay for goods and services that are to be provided in the subsequent fiscal year unless the services are part of a contract which is not feasible to divide between fiscal years.

--Prohibit award of contract modifications without a request from the tribe and a corresponding increase in the work statement or in the amount of services to be provided.

--Require tribes to submit appropriate financial and program progress reports.

--Require tribes to develop adequate property management systems.

To ensure that contract and grant provisions are effectively carried out, we suggest that the Secretary direct the Assistant Secretary for Indian Affairs to consider three possible alternative organizational structures for BIA. (See pp. 27 to 32.) The reorganization should include establishing full-time contract administrators reporting directly to the contracting officer.

The Secretary of Health and Human Services should direct the Administrator of the Health Services Administration to revise IHS policies, procedures, and practices as appropriate to:

--Require that all contract and grant agreements include specific criteria against which to measure performance.

--Terminate a contract or grant where tribal performance constitutes grounds for termination under the pertinent statute.

--Prohibit award of contracts in which the starting date precedes the date of award.

--Require tribes to develop adequate property management systems.

--Require tribes to submit appropriate financial and program progress reports.

RECOMMENDATION TO THE CONGRESS

Because BIA has made little progress in resolving its continuing management deficiencies, the Congress during its authorization, oversight, and appropriation deliberations should require the

Secretary of the Interior to report on the progress made in implementing our recommendations.

AGENCY COMMENTS AND OUR EVALUATION

The Department of Health and Human Services concurred with our recommendations to include specific performance measurement criteria in all contracts and grants and in January 1981 issued a new contract format to all contracting officers. The new format provides an array of criteria against which performance can be measured.

The Department concurred in part with our recommendation to cancel a contract or grant where tribal performance is unsatisfactory. It viewed this as substituting a standard not authorized by the legislation. We did not intend to recommend a new standard or to compromise the safeguards in the legislation. We wanted to emphasize the need to use rescinding provisions in the existing legislation where appropriate. We have, however, modified the recommendation and it now states that a contract or grant should be terminated when tribes do not perform in accordance with conditions set forth in legislation.

The Department concurred with our recommendation to prohibit awarding contracts in which the starting date precedes the date of award and has instructed its contracting staff on this matter.

Concerning our recommendation to require tribes to develop adequate property management systems, the Department stated that it is working on the development of adequate tribal property management systems. It expects to implement the system during fiscal year 1982.

The Department concurred with our recommendation to require tribes to submit appropriate progress reports. The Department implemented a new grants and contracts review process which it expects will bring substantial improvement to this area.

The Department commented that our recommendation against the use of prior year funds appears moot because there is appropriation language (Public Law 96-514) allowing it to use prior year funds to pay for the fulfillment of contracts in a subsequent year. The Department is, however, developing a contracting procedure for rescheduling performance periods effective October 1 of each year. It plans to fund such performance periods only with current fiscal year appropriations.

We did not make a specific recommendation to the Department to prohibit this practice because of the appropriation language in Public Law 96-514 allowing this practice in fiscal years 1980 and 1981. The examples discussed in the report, however, involve fiscal years 1978 and 1979. We agree with the Department's planned actions in this regard.

The Department of the Interior generally agreed with the report findings and is taking action to close out completed contracts and grants through audits by its Inspector General's Office or by private auditing firms. Interior is also developing an action plan to upgrade tribal accounting systems.

Interior agreed with our recommendations to

--enforce compliance with the letter-of-credit procedures,

--monitor tribal letter-of-credit withdrawals on each contract or grant to ensure a tribe does not withdraw more than the amount authorized by the contract or grant,

--have BIA arrange with CPA firms for annual financial audits of contracts and grants,

--prohibit award of contract modifications without requests from the tribe and a corresponding increase in the work statement or in the amount of services to be provided,

--require tribes to submit financial and program progress reports, and

--require tribes to develop adequate property management systems.

Interior is planning to develop appropriate instructions for these recommendations and monitor compliance.

Interior agreed with our recommendation that all contract and grant agreements should include specific criteria against which to measure performance. Interior expressed concern with the words "specific criteria" and suggested a better approach would be to strive for a clear, concise statement of work within which a monitoring plan can be developed. It proposed to have the BIA reviewing official certify that the work statement is satisfactory for this purpose and to prepare a monitoring plan. The Department is planning to issue instructions on this matter and monitor the progress on meeting this recommendation.

We believe specific criteria would include a clear, concise statement of work and as such provide a basis for measuring progress in most cases. If properly implemented, the actions planned by Interior should meet the objective of our recommendation.

The Department generally agreed with our recommendation to cancel a contract or grant where tribal performance is unsatisfactory. It did, however, point out that the legislation set forth conditions for contract cancellation and that they were not the same as under Federal Procurement Regulation procedures.

We did not intend to recommend action not authorized by the legislation. We wanted to emphasize the need to use the

cancellation provisions in the existing legislation. We have, however, modified the recommendation to make it more compatible with the legislation.

Interior generally agreed with our recommendation to prohibit award of contracts in which the starting date precedes the date of award, but felt there are circumstances when latitude should be afforded and that a blanket prohibition is unreasonable. It cited the human factor and exceptions provided for in the Federal Procurement Regulations. Interior, however, is planning to instruct its field offices to prohibit the practice, to extend contracts if they will expire before new contracts can be awarded, and to contract early in the cycle. The tribes will also be advised of the problem and the consequences of noncompliance. Interior plans to monitor compliance with the instructions.

Our recommendation was not intended to prohibit exceptions provided for in the Federal Procurement Regulations. We believe the large number of cases (141 out of 175) supports the need for corrective action. However, although Interior instructed its field offices on this matter in response to our February 1978 report, little progress appears to have been made in response to those instructions. Therefore we suggest close monitoring of compliance with the new instructions.

Interior did not agree with our recommendation as written to prohibit the practice of using prior fiscal year funds to pay for goods and services that are to be provided in the subsequent fiscal year unless the services are part of a contract for an end product and it is not feasible to divide the contract between fiscal years. Interior stated that since Public Law 93-638 contracts are for the operation of BIA programs, they are all, in effect, service contracts and have no deliverable "end products" per se. Interior stated that our recommendation, in essence, says there are no inseverable service contracts unless the ultimate objective of the contract is the delivery of an "end product." Interior used BIA contracts for the operation of the higher education scholarship programs as an example where the need to pay the tuition is in one fiscal year but most of the semester falls within the next fiscal year. Thus, there is no end product per se. Interior is, however, planning to instruct its area contracting officers to obtain, prior to award, a solicitor's review of all contracts financed with current fiscal year appropriations whenever the period of performance extends into the next fiscal year.

We agree with Interior that it may not always be feasible to divide a contract between fiscal years and have modified our recommendation accordingly. Nevertheless, we believe the contract we questioned would not fall into the exception category. Interior is planning to take action which, if properly implemented, should prevent this situation from recurring. Our recommendation was aimed at achieving this result.

Interior did not agree with any of our three suggested alternative organizational structures for BIA. Interior believes that all of the proposals have a common flaw and are based on three premises that are not entirely accurate. The common flaw is that, under all those proposals, BIA's authority to administer Public Law 93-648 would be diluted or completely eliminated while the responsibility for its success is retained. The less-than-accurate premises are that

--the contractual relationship between BIA and the tribes is or should be "at arm's length,"

--monitoring of actions by a Washington-based committee or panel will ensure accountability, and

--major organizational changes are required to accomplish change.

Interior did, however, recognize the urgency of taking action to increase BIA and tribal accountability for contracts and grants. It believes what is needed in this regard can be accomplished within the current organization.

Interior is planning to take the following actions.

--Revise Public Law 93-638 regulations to recognize the Federal Grant and Cooperative Agreement Act. This will shift Public Law 93-638 contracts to grants and will vest signatory and administrative authority with agency superintendents.

--Establish full time Public Law 93-638 administrative positions in the agency offices.

--Area offices will establish an agency oversite function and will report quarterly to the central office.

Until the regulations go into effect, Interior is planning to issue instructions that will (1) make agency superintendents responsible for administrating all Public Law 93-638 contracts and grants, (2) require full-time contract or grant administrators at the agency level, and (3) require the area offices to establish an oversight function.

Although Interior's planned actions to deal with this matter are a step in the right direction and should improve the situation, we still believe some organizational change is necessary to separate the procurement and program functions. The three organizational structures were offered for consideration and could be modified to meet the needs of the Department. We do not see how separating the procurement and program functions eliminates BIA authority to administer Public Law 93-638. Even with the two functions separated, we would anticipate that personnel from both groups would still work together to develop the contractual

documents. Once the terms and conditions have been specified and agreed to by the tribe, we believe the contract function needs to have a separate chain of command in order to ensure compliance with the terms and conditions. This would also allow the program personnel the opportunity to concentrate on program delivery and provide technical assistance rather than have the additional duty of monitoring contracts and grants.

Regarding the premises, we agree that BIA and the tribes have some contractual relationships that are not totally "at arm's length." This situation, however, would not preclude the separation of the procurement and program functions and enforcing the terms and conditions of a contract or grant after it has been negotiated with the tribe. Our suggestion of a Washington-based panel was not aimed so much at ensuring accountability but more at increasing the visibility of large dollar contracts. We agree that major organizational changes are not required to accomplish change. In this case, however, we believe some organizational change is necessary in order to provide the opportunity for better written contracts and compliance with the contractual terms and conditions.

Subsequent to receiving agency comments, a joint meeting was held with staff of the House Committee on Interior and Insular Affairs and officials of the Department of the Interior to discuss the report and its recommendations. Concern was expressed at this meeting that most of the same problems we found in 1978 existed in 1980 even though BIA had agreed to take corrective action. A long discussion was held on the need to separate program functions from those of awarding grants and contracts and monitoring tribal performance. Interior officials agreed to reconsider our proposed reorganizational changes and report back to us within 90 days.

PART OF OUR REPORT 1/ DISCUSSING

ALTERNATIVE WAYS TO DELIVER PROGRAMS AND SERVICES

THAT WILL IMPROVE THE QUALITY OF LIFE OF INDIANS

Although Federal agencies have repeatedly advised us and the Congress that actions had been taken or planned to correct the management weaknesses discussed in our reports, such actions were not always taken, were inadequate, or were not implemented on a continuing basis. The weaknesses have persisted through the years with little or no progress in improving the delivery of Federal programs and services to Indians. As a result, many Indians may have suffered needlessly, while costs of administering the programs and services have increased drastically. For example, BIA's appropriations alone have risen from about $500 million in fiscal year 1975 to about $1.0 billion for fiscal year 1980. If data were available on funds expended on Indian programs administered by all Federal agencies, Indian program costs would be even higher.

We believe that implementation of the numerous recommendations in our reports would have vastly improved delivery of programs and services to Indians. Over the years, we, congressional committees, the American Indian Policy Review Commission, a BIA task force, and others have reported on the failure of the BIA to correct weaknesses in its management of programs and services for Indians. However, the continued failure of Federal agencies, over the past several years, to implement our recommendations or otherwise correct management weaknesses we have identified has led us to the conclusion that the Congress needs to consider alternatives to insure more effective delivery of programs and services to Indians. Unless new alternatives, such as those discussed in this chapter, are adopted, mismanagement of programs and services may continue and improvement of the quality of life of Indians will be impeded.

The alternatives we identified are:

--Consolidate all federally administered Indian programs and services into a single agency, such as BIA or a separate independent agency.

--Consolidate program areas, such Indian education, housing, and business development, into the Federal department or agency having primary responsibility for that area. For example, all Indian education could be under the Department of Education, all Indian housing could be

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1/"Federal Management Weaknesses Cry Out for Alternatives To Deliver Programs and Services to Indians To Improve Their Quality of Life" (CED-78-166, Oct. 31, 1978).

under the Department of Housing and Urban Development, and all Indian business development programs could be under the Department of Commerce.

--Have all Federal agencies funnel their Indian program funds through one agency, such as BIA, rather than directly to Indian tribes.

--Assist tribes in developing the capability to manage Federal programs and services and provide direct funding through block grants.

Each of the alternatives has advantages and disadvantages. In the discussions which follow, we have identified some of those we believe could affect Indians and the Federal Government.

CONSOLIDATE ALL FEDERALLY ADMINISTERED INDIAN PROGRAMS INTO A SINGLE INDEPENDENT AGENCY

On May 17, 1977, as a result of a congressionally mandated review of Federal programs for Indians, the American Indian Policy Review Commission submitted its final report recommendations to the Congress. Regarding Federal administration of Indian programs, the report stated:

"One of the most serious impediments to the development of Indian self-sufficiency today lies in Federal administration. Indian tribes, like non-Indian communities, are plagued by an excessive number of Federal agencies offering different programs all of which must be interrelated in order to achieve full community development.

* * * * *

"It is the conclusion of this Commission that:

1. The executive branch should propose a plan for a consolidated Indian Department or independent agency. Indian programs should be transferred to this new consolidated agency where appropriate."

This proposal or alternative has certain advantages that make it attractive to Indians as well as to the Federal Government; however, some disadvantages would have to be overcome.

Advantages to Indians	Disadvantages to Indians
1. Indians would have to deal with only one agency to obtain needed assistance.	None.

2. Fewer forms and reports would be required.

3. Fewer policies, regulations, rules, procedures, etc., would have to be adhered to.

4. Federal response to Indian needs should be faster and thereby reduce hardships on many Indians.

5. Communications between Indians and the Federal Government should be greatly enhanced, leading to a better understanding of Indian needs and solutions to their problems.

Advantages to Government	Disadvantages to Government
1. Coordination problems which now exist between Federal agencies would be eliminated.	1. Relocation of Federal employees would possibly lead to morale problems in the short run.
2. Overall costs of providing programs and services to Indians should be reduced because of economies in administration.	
3. The possibility of duplicate funding being provided to Indians would be eliminated.	
4. Control over Federal funds for Indian programs could be greatly improved.	
5. The Congress would have easier access to information on Indian needs and Federal efforts to meet those needs.	
6. Communications between the Federal Government and Indians should be greatly enhanced, leading to a better understanding of Indian needs and solutions to their problems.	

CONSOLIDATE PROGRAM AREAS INTO THE FEDERAL DEPARTMENT OR AGENCY HAVING PRIMARY RESPONSIBILITY FOR THAT AREA

In our reviews of Indian programs, we have found that often there are similar programs being administered by several Federal agencies, yet there is little or no coordination. Our reports on Indian business development, for example, pointed out that several Federal agencies within the Departments of the Interior, Agriculture, and Commerce, and the Small Business Administration administer programs under which Indians can obtain economic development assistance. Within this proliferation of programs, however, each agency acts independently according to differing mission responsibilities, program goals, and administrative procedures, and no formal mechanism has been formulated to coordinate Federal projects.

In a June 27, 1975, report on this subject, we concluded that action was needed to decide how Federal agencies would respond collectively to Indian economic development needs and to assign to one agency the role of directing and coordinating Federal programs affecting economic development efforts. We recommended at that time that a proposal by the Director, Office of Manangement and Budget (OMB), to establish a domestic council committee on Indian affairs, specify that the committee handle these Indian economic development efforts.

When we again reviewed this area for our February 15, 1978, report, we found that (1) OMB had taken no action to establish such a committee and (2) other Federal efforts to coordinate economic development programs were not effective. We, therefore, recommended that the Congress consolidate Federal programs on Indian economic development and place them in a single agency. Such consolidation was also recommended by the American Indian Policy Review Commission.

In our March 31, 1978, report on Indian housing, we again concluded that existing uncoordinated Federal programs had not been successful. We recommended, among other things, that the Congress redefine the national policy for Indian housing, and consolidate Indian housing programs and the responsibility for Indian housing into a single agency.

One way of reducing fragmentation is by consolidating Indian programs into the department or agency which has primary responsibility for the subject area. This would mean that:

--The Department of Education would have total responsibility for all Indian education programs.

--The Department of Housing and Urban Development would have total responsibility for all Indian housing programs.

--The Department of Commerce would have total responsibility for Indian business and economic development programs.

BIA would retain only its role of meeting the Federal trust responsibilities and providing technical assistance to help tribes improve their government. BIA staffing levels would be substantially reduced under this alternative. Other advantages and disadvantages of this alternative are:

Advantages to Indians

1. Indians would have to deal with only one agency to obtain single services such as housing and education. As a result Federal response to these single services may be quicker.

Disadvantages to Indians

1. Indians would still have to deal with more than one agency to meet all their needs. For example, education needs would be met by the Department of Education and housing needs by the Department of Housing and Urban Development.

2. Because programs such as housing depend on coordination of water, sewerage, roads, etc., Indians would still have to deal with more than one agency to obtain such assistance.

3. Because Federal agencies operate under different criteria, have different priorities, and do not always coordinate their activities, completion of projects and other assistance, such as housing, might still be delayed under this alternative.

Advantages to Government

1. The Government should have better control over Federal funds spent on single programs such as housing and education.

Disadvantages to Government

1. Federal efforts to meet total Indian needs would still be fragmented among several agencies, and as a result, coordination of all Indian programs would still be a problem.

2. Costs of such programs should decrease because certain administrative costs would be reduced by the consolidation.

2. Some reorganization of Federal agencies and shifting of employees would be required. This would cause some personal hardships and morale problems.

HAVE ALL FEDERAL AGENCIES FUNNEL THEIR INDIAN PROGRAM FUNDS THROUGH ONE AGENCY

This alternative may be the least drastic to implement, as it would not require any major reorganization within the present Government structure. It would, however, require considerable communication, coordination, and cooperation among the Federal agencies administering Indian programs, which at present are severely lacking.

Because of the trust responsibilities already designated to BIA, it may be logical for BIA to handle coordination of Federal funding for Indian programs. All Federal agencies involved in funneling funds through BIA should be required to provide accurate and timely information on their Indian programs, which in turn would have to be carefully analyzed by the Congress and BIA. Due to the lack of accurate information now available, improved management information systems would be required, and other problem areas discussed in chapter 2 of this report would have to be resolved. Otherwise, although this alternative should provide information on where Federal funds are being used, it may not improve Federal management of Indian programs.

Some specific advantages and disadvantages of this alternative are discussed below.

Advantages to Indians

None

Disadvantages to Indians

1. This alternative would add another layer for Indians to deal with in obtaining assistance. Further delays might be experienced.

2. More forms and reports would be required. Additional rules, regulations, and procedures would also be required.

Advantages to Government

1. Under this alternative the Federal Government

Disadvantages to Government

1. Coordination of reporting would be very difficult.

would be able to identify the total Federal funds provided to each Indian tribe. Presently this cannot be done, and as a result some duplicate funding may occur.

2. Coordination of Federal programs for Indians could be improved provided the agency through which funds are funneled is authorized to do more than compile statistics.

3. Improved coordination and control over funds should improve the delivery of programs and services to Indians.

DEVELOP TRIBES' CAPABILITIES TO MANAGE THEIR OWN AFFAIRS AND PROVIDE DIRECT FUNDING THROUGH BLOCK GRANTS

In the past several years, following the President's July 1970 message to the Congress on American Indians, BIA has attempted to develop tribes' capabilities to manage their own affairs by encouraging them to contract for the authority and responsibility to plan, conduct, and administer programs and services now provided by BIA.

The importance of developing tribal management capabilities was further emphasized on January 4, 1975, by enactment of the Indian Self-Determination and Education Assistance Act, which authorizes contracts and grants to help tribes develop the capability to operate programs for which they might eventually contract.

This action may be the first step toward providing direct funds through block grants to tribes to allow them to manage their own affairs. However, BIA's actions so far have not been without problems. As stated in our report on Indian self-determination contracts, grants, and training and technical assistance activities, BIA is not monitoring the use of these contracts and grants, and training and technical assistance grants are being used for purposes other than those contemplated in the act. For example, one grant was used to establish and operate a drought impact area office and another was used to conduct a fisheries management program. In neither case were training and technical assistance provided to enable the tribe to take over any program segment previously administered by BIA.

Before this alternative can be considered viable, Federal agencies must help tribes acquire the skills needed to effectively manage their own programs. This will include training that will provide management, budgeting, financial accounting, personnel, and auditing skills. It will also include assistance in development of adequate accounting and reporting systems. Without such skills there would be no control over grant funds and no assurance that the required services were provided to Indians.

Under this alternative, BIA's role would consist of meeting the Federal trust responsibility. As a result, BIA staffing would be substantially reduced.

Other advantages and disadvantages for this alternative are discussed below.

Advantages to Indians

1. Under this alternative tribes would be able to take full advantage of the principles of self-determination. Tribes would manage their own affairs.

2. Tribes would set their own priorities and budget requests.

3. Tribal governments would be strengthened and as a result the Indian people would have control over their own destiny.

Disadvantages to Indians

1. Tribal governments would function as do other local governments and would be limited to funds obtained through block grants. Unlike the past, when BIA would always come to their rescue, tribes would have to compete with local governments for increased funding for program overruns and unexpected emergencies.

Advantages to Government

1. Substantial economies should occur because Federal agencies would not be responsible for planning and implementing Indian programs.

Disadvantages to Government

1. No control over programs and as a result no assurance that needed services would be provided to Indians.

2. Under this alternative the Federal Government would be able to identify total Federal funds provided to each Indian tribe.

APPENDIX I

2. The Federal Government's trust responsibility might be affected and would have to be carefully considered before initiating this alternative.

SUMMARIES OF OUR REPORTS ON FEDERAL MANAGEMENT OF INDIAN PROGRAMS

"IMPROVING FEDERALLY ASSISTED BUSINESS DEVELOPMENT ON INDIAN RESERVATIONS" (RED-75-371, JUNE 27, 1975)

The report discussed effectiveness of Federal efforts to improve economic conditions on Indian reservations, problems encountered, and opportunities to improve those efforts.

We reviewed 28 economic development projects on seven Indian reservations that accounted for more than $27 million of Federal agency expenditures for developing the reservation economies. The study, including a survey of business, showed that the agencies have had limited success.

Recommendations

To increase effectiveness of the Indian reservation promotion program, the Director, Office of Management and Budget, should work with the Secretaries of the Interior, Commerce, and Agriculture; the Administrator, Small Business Administration; and other agency heads he deems appropriate, to establish an interagency committee which would

--identify industries which are most likely to consider locating on a reservation,

--aggressively encourage and assist those firms identified as having an interest in locating on a reservation, and

--insure the availability of current promotional literature and materials.

To provide greater assurance of successful operation of new federally financed business ventures on Indian reservations, the Director, Office of Management and Budget, should work with the Secretaries of the Interior, Commerce, and Agriculture; the Administrator, Small Business Administration; and other agency heads he deems appropriate, to establish an interagency committee which would develop procedures for each agency's use in making systematic evaluations of proposed business and commercial development projects and in providing timely monitoring of, and competent technical assistance for, businesses receiving Federal financing assistance.

The Secretary of the Interior should have the Commissioner of Indian Affairs 1/ identify solutions to the problems of excessive turnover of Indian labor and consider the establishment of a postemployment counseling program as one possible solution to helping the Indian worker adjust to a structured work environment.

The Director, Office of Management and Budget, should require that a proposal by his Office to establish a domestic council committee on Indian affairs specify that the committee's responsibility would include efforts to (1) clarify Federal policy concerning Indian economic development assistance responsibilities of Federal agencies, (2) assign responsibility to a single agency for directing and coordinating program efforts, and (3) work with the Secretaries of the Interior, Commerce, and Agriculture; the Administrator, Small Business Administration; and other agency heads he deems appropriate, pending establishment and operation of the committee, to develop proposals for the committee's consideration.

"BETTER OVERALL PLANNING NEEDED
TO IMPROVE THE STANDARD OF LIVING
OF WHITE MOUNTAIN APACHES OF ARIZONA"
(FGMSD-75-47, AUG. 12, 1975)

This report shows that the standard of living for Apache Indians on the Fort Apache Reservation in Arizona was considerably lower than that for the general public. The problems preventing White Mountain Appaches from achieving a standard of living comparable to the national average were multiple and interrelated. The report discussed the need for the Department of the Interior to assist the Fort Apache tribal council in planning and implementing an overall program for improving the standard of living of the White Mountain Apaches.

Recommendations

The Secretary of the Interior should direct the Bureau of Indian Affairs to accentuate its cooperative efforts with other Federal agencies and the tribal council in formulating and implementing an overall plan which recognizes the interrelationships among the various programs and factors involved. The plan should take into account the natural assets of the reservation and its people and should establish goals and priorities in accordance with Apache values and aspirations. Under the Indian Self-Determination and Education Assistance Act of 1975, the Bureau's planning efforts should be offered as technical assistance to the

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1/The Commissioner of Indian Affairs position was eliminated in September 1977 when the new position of Assistant Secretary for Indian Affairs was established.

tribal council on an interim basis until tribal capacity to perform this planning and coordination is fully developed.

The Secretary of the Interior should also direct the Bureau to work with other Federal agencies and with the tribal council to improve the economic self-sufficiency of the reservation so that increase in Apache income is less dependent upon increased Federal expenditures for the reservation.

Even recognizing the Self-Determination Act and the emphasis it places on giving Indians more responsibility for managing their own affairs, the executive branch still has a large responsibility for seeing that Federal funds are used effectively and efficiently to improve the standard of living of Indians on reservations.

Coordination of Federal efforts at the reservation level is needed for all Indian tribes, and evaluations of the type covered in this report should be made for all tribes.

Therefore, the Office of Management and Budget should take the necessary action to insure that

--an approach is developed which will coordinate Federal efforts at the reservation level; 1/

--continuous evaluations are conducted of the effect that Federal programs have on the standard of living at Indian reservations, including developing information systems to support such evaluations; and

--annual reports are submitted to the Congress on progress made in improving the standard of living of reservation Indians and on any needed changes in legislation to improve the effectiveness of Federal programs.

If early action is not taken, we recommend that the Congress enact appropriate legislation.

1/Our report "Improving Federally Assisted Business Development on Indian Reservations" (RED-75-371, June 27, 1975) made a similar recommendation with respect to business development programs on Indian reservations. The above recommendations expand the earlier one to apply to all Federal programs.

"INDIAN NATURAL RESOURCES--OPPORTUNITIES FOR IMPROVED MANAGEMENT AND INCREASED PRODUCTIVITY, PART 1: FOREST LAND, RANGELAND, AND CROPLAND"
(RED-76-8, AUG. 18, 1975)

The management of Indian natural resources had been hindered by

--limited long-term planning for resource development,

--lack of personnel for technical assistance and advice, and

--conflict of tribal or individual Indian desires with accepted resource management practices.

This report made numerous recommendations to help overcome these problems and improve the management of natural resources to increase the benefits to Indian people and to assist in meeting the Nation's long-term needs for food and fiber.

Recommendations

The Secretary of the Interior should direct the Bureau of Indian Affairs to work with the tribes to:

--Assess the viability of such forest management opportunities as precommercial thinning, commercial thinning, and reforestation to identify the best opportunities.

--Develop long-range work plans for eliminating the backlog of needed forest management work over a reasonable time, with emphasis on the best opportunities first.

--Develop guidelines that limit the use of 10-percent funds to specific forest management activities and establish review procedures to insure the funds are used in accordance with the guidelines.

--Develop salvage plans and use simplified timber sale preparation and administration procedures tailored especially for harvesting dead and dying timber.

--Determine the additional staff needed to harvest the allowable volume of timber and to perform needed forest management work and inform the appropriate committees of the Congress of these needs.

--Periodically evaluate the effectiveness of its efforts in increasing timber production and report the results to the Congress.

The Secretary of the Interior should direct the Bureau to work with the tribes to develop long-term range management plans. These plans should provide for agreement between the Bureau and the tribes on:

--Range and soil inventories to determine current range capacity.

--Timetables for adjusting herd size to capacity.

--Grazing permit systems.

--Development and prudent use of improvements to increase range capacity.

--The amount of Federal and tribal funding needed to develop the improvements.

--Education programs to promote good range management practices.

To encourage the appropriate implementation of these plans, the Secretary of the Interior should request funding for only those range improvements that are in agreement with the long-term management plans and submit the plans to the Congress when requesting funds for range improvements.

The Secretary of the Interior should direct the Bureau to develop lease procedures and terms to insure that Indians (1) have full and complete knowledge of Federal grants involving their leased lands and (2) do not unknowingly forego rental income for improvements made by renters and financed by Federal grants.

"COORDINATION NEEDED IN THE AWARD OF FINANCIAL AID TO INDIAN STUDENTS" (MWD-76-14, SEPT. 8, 1975)

The report pointed out that problems had arisen in developing financial aid packages for Indians because of the lack of Office of Education and Bureau of Indian Affairs guidance.

Recommendations

The Secretary of the Interior should require that:

--The Bureau of Indian Affairs inform all those responsible for providing Bureau grants to Indian students that Bureau policy is that such grants are to be supplementary to all other sources of financial aid.

--Bureau educational specialists take actions to see that Indian students apply on time for Office of Education aid. These actions could include a renewed effort to

make high school counseling more effective and contacts with Indian students on campus to help them apply for Office of Education aid.

"INDIAN NATURAL RESOURCES--PART II: COAL, OIL, AND GAS BETTER MANAGEMENT CAN IMPROVE DEVELOPMENT AND INCREASE INDIAN INCOME AND EMPLOYMENT" (RED-76-84, MAR. 31, 1976)

The development of Indian mineral resources for the benefit of American Indians had been hindered by

--lack of resource inventories, mineral management plans, and mineral expertise within the Bureau of Indian Affairs;

--no means to determine if Indian preference in hiring lease provisions were effective;

--failure to establish a coal-lease royalty rate based on the selling price of coal; and

--inadequate monitoring of lease terms after issuance of a lease.

This report made numerous recommendations to help overcome these problems and improve the management of mineral resources to increase the economic benefits of the Indian people and help the Nation meet its energy needs.

Recommendations

To help improve development of Indián mineral resources, the Secretary of the Interior should direct the Bureau of Indian Affairs to:

--Develop complete minerals inventories for all reservations having such resources.

--Develop, through the use of available resource information, mineral management plans, taking into consideration the wishes of the Indian people, and update these plans as additional information becomes available.

--Determine the mineral expertise staffing BIA needs to adequately fulfill its trust responsibilities at its headquarters and field locations and take the steps necessary to meet these needs. If it is not feasible to have mineral experts at all mineral developing reservations, alternatives should be considered such as using a minerals task force or consultants.

--Establish procedures to exchange and distribute between area and agency offices information relating to experience gained by the tribes in developing mineral resources.

--Update and maintain its operations manual and expedite revisions to the Code of Federal Regulations when changes are necessary.

To increase Indian employment in the minerals industry, the Secretary of the Interior should direct the Bureau of Indian Affairs to

--establish specific requirements in all Indian mineral leases for Indian preference in hiring and procedures for leases to report regularly to the Bureau and the tribes on the status of Indian employment and

--establish procedures for each reservation with minerals development for either the Bureau or the tribe to insure that Indian-preference-in-hiring provisions and requirements are being followed.

To help insure that Indians benefit from the increasing value of the coal resources and to improve coal-lease management, the Secretary of the Interior should direct the Bureau of Indian Affairs to:

--Establish a coal-lease royalty rate policy based on a percentage of the selling price of coal, with a fixed amount (floor) below which the price cannot fall.

--Determine whether the 2,560-acre limitation and the criteria for exceeding the limitation are valid, and, if it is found they are no longer valid, take action to revise the Code of Federal Regulations accordingly. In making this determination, factors to be considered in determining the number of acres to be leased should be identified.

--Insure that the Bureau lease files are adequately documented to support all actions taken.

To improve the Geological Survey's management of leases of Indian mineral lands, the Secretary of the Interior should require the Director of the Geological Survey to

--establish a penalty fee for late payment of royalties and enforce such requirements as necessary;

--instruct lessees to submit reports required by Federal regulations and lease terms when they are due and require purchasers of Indian mineral resources to submit reports on products purchased;

--establish procedures to coordinate reservation reclamation activities among the various agencies involved with this activity on each reservation;

--determine the level of staffing necessary to satisfactorily perform its oil and gas responsibilities on Indian lands and take the steps necessary to obtain such staffing;

--require its field offices to verify on a random basis that oil and gas wells reported to be shut down are no longer producing;

--perform all required oil and gas site inspections; and

--postaudit all Indian oil and gas lease accounts.

"CONCERTED EFFORT NEEDED TO IMPROVE INDIAN EDUCATION" (CED-77-24, JAN. 17, 1977)

This report pointed out that in April 1972 we reported that the Bureau of Indian Affairs needed to improve the quality of education provided by Bureau schools. It also pointed out that since April 1972 the Bureau had done little to meet the educational needs of its students.

--Indian education for the 1970s had not been defined.

--A comprehensive educational program had not been established.

Recommendations

The Secretary of the Interior should direct the Commissioner of Indian Affairs to:

--Determine the educational needs of Indian students, so appropriate programs can be designed to meet the needs.

--Establish realistic goals and objectives for meeting such needs and communicate the goals and objectives to all operating levels in the Bureau.

--Develop a comprehensive educational program which indicates specific policies and procedures for dealing with problems which impede progress in meeting established goals and objectives.

--Monitor and evaluate implementation of established educational goals and programs at all operating levels of the agency.

--Develop a management information system that will provide:

1. Meaningful and comprehensive information on the academic aptitude and achievement levels of students in the Bureau's school system.

2. Program-oriented financial management reports to meet the management needs of Bureau education program officials.

Matters for attention by the Congress

Since the Bureau had made no major progress over several years in implementing policies, procedures, and programs to insure that the educational needs of Indian students were being met, the congressional committees should more intensively monitor the Bureau and, if adequate progress is not made, explore other alternatives, such as transferring responsibilities for administering Indian education programs to another Government agency.

"INDIAN EDUCATION IN THE PUBLIC SCHOOL SYSTEM NEEDS MORE DIRECTION FROM THE CONGRESS" (HRD-76-172, MAR. 14, 1977)

The Indian Education Act of 1972 is primarily designed to support special educational needs of Indian children in elementary and secondary schools. This report discussed problems in identifying and selecting Indian children and assessing their special educational needs. It also discussed problems in program operation and administration.

Recommendations

The Secretary of Health, Education, and Welfare 1/ should direct the Commissioner of Education to establish adequate guidelines for local education agencies to use in determining and documenting the number of Indian children eligible for the part A program.

For better distribution of part A funds and to serve only Indian children with special needs, the Congress should--after consulting with the Office of Indian Education, the National Advisory Council on Indian Education, and Indian organizations and tribes--provide a clearer definition of Indian children who should be considered eligible for the program and require that part A funds be awarded to local education agencies based on the number of Indian children with special educational needs.

1/The Department of Health, Education and Welfare was partitioned on May 4, 1980, into the Department of Health and Human Services and the Department of Education.

The Secretary of Health, Education, and Welfare should direct the Commissioner of Education to:

--Provide local education agencies more specific guidance on conducting needs assessments.

--Require local education agencies to adequately make and document such assessments.

--Prohibit local education agencies from using Indian Education Act funds to purchase prefabricated buildings, unless specific statutory authority is obtained for such uses.

The Congress, after consulting with the Office of Indian Education, the National Advisory Council on Indian Education, and Indian tribes and organizations, should define what constitutes the special educational needs of Indian children.

The Secretary of Health, Education, and Welfare should direct the Commissioner of Education to:

--Establish clear, measurable goals for the title IV Indian education program and set periodic milestones for measuring program effectiveness. Within these goals, grantees should continue to have flexibility to design their projects according to their particular needs. Approaches used in the Department of Health, Education, and Welfare's Operational Planning System and data obtained from the national needs assessment may be useful in establishing these goals and milestones.

--Require grantees to make adequate annual project evaluations.

--Use project evaluations to determine if grantee improvements are needed in future projects.

--Improve technical assistance to parts A and B grantees to help them develop clear, measurable project objectives and evaluate and report project results.

--Solicit grantee comments on the usefulness of the Office of Education's evaluation handbook.

The Secretary of Health, Education and Welfare should direct the Commissioner of Education to clarify parent committee responsibility and authority in program regulations. The Office of Indian Education should also encourage the local education agencies to provide parent committees the necessary guidance and assistance and the necessary data on their children's needs and accomplishments. The Office of Indian Education should also encourage the local education agencies to increase the number of Indian parents participating consistently in committee functions and get parent committees involved in title IV project operations.

To strengthen the administration and monitoring of title IV projects, the Secretary of Health, Education, and Welfare should direct the Commissioner of Education to

--require that title IV applications contain sufficient information supporting full grantee compliance with specific provisions of the act and the Office of Indian Education regulations and

--develop a better management information and reporting system to allow the Office of Indian Education to determine and resolve grantee problems.

"THE BUREAU OF INDIAN AFFAIRS SHOULD DO MORE TO HELP EDUCATE INDIAN STUDENTS" (HRD-77-155, NOV. 3, 1977)

The Bureau of Indian Affairs knew little about Indian students' preparation for and performance in college or about the colleges they attend, yet it continued to spend millions of dollars each year on the higher education grant program for Indians. In fiscal year 1976, grants totaled about $33 million.

Recommendations

The Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to:

--Develop and implement a system for gathering information on Indian students and the colleges they attend to help these students plan their education. Student information should include high school courses taken, achievement test scores, career goals, college grade point averages, the number of students not continuing their education, and the number of graduates. Information should be obtained on support services--such as counseling, tutoring, and remedial programs--at postsecondary educational institutions.

--Encourage Indian counselors to perform duties that enhance the Indians' opportunities to further their education.

--Encourage colleges and universities without Indian counselors to see that Indian students are receiving adequate supportive services.

--Develop regulations based on the higher education program manual and require Bureau personnel to follow them.

--Sufficiently staff the higher education program so that needed services can be provided to Indian students.

LETTER REPORT ON BUREAU OF INDIAN AFFAIRS COORDINATION WITH OTHER FEDERAL AGENCIES (CED-78-47, FEB. 8, 1978)

The letter referred to and transmitted copies of four previously issued reports dealing with the need for improved coordination among Federal agencies operating Indian programs.

"THE BUREAU OF INDIAN AFFAIRS NEEDS TO DETERMINE HOW WELL ITS INDIAN TRAINING PROGRAM IS WORKING AND ASSIST TRIBES IN THEIR TRAINING EFFORTS" (CED-78-46, FEB. 13, 1978)

After 5 years of contracting with tribal groups to train Indian people on reservations for employment, the Bureau of Indian Affairs still lacked written criteria to evaluate the performance of its Indian training program (Indian Action Team). As a result, the Bureau did not know which of its Indian contracts were successful, which ones needed technical assistance, and which ones should not have been renegotiated. Total cost of the training program from inception in 1972 through fiscal year 1977 was $66.2 million.

Recommendations

The Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to carry out the recommendations of the Bureau's management review team and to make every effort to reorganize the Indian Technical Assistance Center in the manner outlined in the Bureau's draft operating manual. The Assistant Secretary should then instruct the Chief of the Center to:

--Establish, with the Indian contractors, measurements to evaluate the effectiveness of the Indian Action Team program.

--Modify the Indian contracts to reflect the measurement criteria established and the reporting requirements.

--Require that Indian contractors submit necessary reports to the Center for evaluation purposes.

--Evaluate the Indian contractors' performance as soon as possible to identify those programs for which further contracts should not be negotiated.

--Evaluate proposed Indian Action Team programs and fund the most promising ones if, as a result of the contractor evaluations, funds become available.

--Review all Indian Action Team program conflicts with the Indian contractors to determine if technical assistance may be needed and to provide such assistance.

"CONTROLS ARE NEEDED OVER INDIAN SELF-DETERMINATION CONTRACTS, GRANTS AND TRAINING AND TECHNICAL ASSISTANCE ACTIVITIES TO INSURE REQUIRED SERVICES ARE PROVIDED TO INDIANS" (CED-78-44, FEB. 15, 1978)

The Bureau of Indian Affairs did not have adequate controls over self-determination contracts and grants awarded to Indian tribes under the Indian Self-Determination and Education Assistance Act, or over related training and technical assistance activities. Thus, the Bureau did not know whether the tribes were providing required services to Indians or if training and technical assistance funds were being properly used. About $157 million was spent on these activities in fiscal year 1977.

Recommendations

The Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to develop a management reporting system to help monitor and control self-determination contracts, grants, and training and technical assistance activities. The Assistant Secretary should also be directed to revise the Bureau's policies, regulations, procedures, and practices as appropriate to:

--Prohibit award of contracts in which the starting date precedes the date of award.

--Require that all contracts and grants include specific criteria against which to measure performance.

--Require that contracts and grants are effectively supervised and monitored by contract and grant officers. This should include (1) designation of full-time contract and grant officer representatives at the area level rather than the agency level in order to remove conflict of interest, (2) clear description of contract and grant officer representative responsibilities, and (3) adequate training of contract and grant officer representatives.

--Prevent training and technical assistance funds appropriated for self-determination purposes from being used for assistance that does not help tribes (1) develop the capability to negotiate and administer self-determination contracts and grants or (2) improve their managerial and governmental capabilities required to fully exercise their self-determination options.

"MORE FEDERAL EFFORTS NEEDED TO IMPROVE INDIANS' STANDARD OF LIVING THROUGH BUSINESS DEVELOPMENT" (CED-78-50, FEB. 15, 1978)

Federal agencies had been unable to assure the development of profitable businesses on Indian reservations, although 25 grant, loan, and technical assistance programs were being federally funded and administered. The two major agencies involved, the Bureau of Indian Affairs and the Economic Development Administration, provided $294 million to help establish businesses during fiscal years 1975-77. Deficiencies in the Bureau's administration of its business loan and grant programs under the Indian Financing Act of 1974 had caused the programs to suffer from delinquencies, inadequate accounting systems, poor analysis of loan and grant applications, missing documents in loan and grant files, inadequate loan servicing by lenders, short repayment terms, and limited provision of technical assistance to businesses.

Recommendations

The Secretaries of Commerce and the Interior should direct the Administrator, Economic Development Administration, and the Assistant Secretary for Indian Affairs to cooperatively:

--Conduct an economic feasibility study that identifies reservations most likely to support self-sustaining economic development and carry out a comprehensive business development program including (1) persuading businesses to locate on reservations, (2) providing them initial financial assistance and (3) assisting them in becoming self-sustaining, profitable enterprises.

--Decide whether long-term Federal support should be provided to economically develop other reservations or whether alternative strategies are needed to improve the living standard of Indians living on reservations that lack potential for successful business development. If so, new strategies should be developed and proposed to the Congress for implementing authority and funding.

The Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to:

--Establish specific procedures and guidelines to preclude making revolving fund loans to tribal relending organizations that have experienced continuous problems.

--Take the necessary action to correct deficiencies in the revolving loan fund's automated accounting system.

--Make sure that the required documentation is obtained, accurate, and evaluated by the Bureau before making or guaranteeing loans and grants.

--Establish a policy restricting participation in the guaranteed loan programs to only private lenders that demonstrate adequate loan-servicing capability.

--Make sure that necessary technical and management assistance is promptly identified and provided.

--Concentrate on identifying and correcting deficiencies in the grant computer system, including requiring that each agency obtain the necessary information reports from its grantees.

The Congress should consolidate Federal Indian economic development programs and place them in a single agency. This agency would be in a much better position to implement the above recommendations.

"QUESTIONABLE NEED FOR ALL SCHOOLS PLANNED BY THE BUREAU OF INDIAN AFFAIRS" (CED-78-55, FEB. 15, 1978)

The Bureau of Indian Affairs based its priorities for constructing school facilities on invalid information, thereby making its 1979 school construction priority list unreliable. Furthermore, the Bureau had not developed comprehensive planning information on school needs of Indian children and could not readily determine when or where school facilities were needed. The Bureau estimated that as of January 1978 about $300 million would be needed to renovate or construct Indian school facilities. The Bureau could save millions of dollars by having Indian children attend nearby public or Bureau schools and by constructing larger, consolidated schools in lieu of smaller, scattered ones.

Recommendations

The Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to

--compare the costs and cultural and academic benefits of constructing small, scattered schools as opposed to larger, centralized schools before schools are scheduled for construction;

--enforce the Bureau's policy of having Indian children attend nearby public schools where adequate facilities are available;

--establish a policy which would require use of available space in nearby Bureau schools before new schools are built;

--require comprehensive planning data to justify school construction priorities;

--require verfication of data on all construction request applications before including them on school construction priority lists; and

--clarify and enforce the Bureau's policies on school attendance boundaries.

"BUREAU OF INDIAN AFFAIRS NOT OPERATING BOARDING SCHOOLS EFFICIE[illegible]LY" (CED-78-56, FEB. 15, 1978)

The Bureau of Indian Affairs had failed to consolidate its boarding schools to make greater use of space and equipment, to establish policies to control boarding school expenditures, and to provide for adequate staff and funds to properly maintain boarding schools. As a result, millions of dollars were being lost.

Recommendations

The Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to:

--Instruct area offices, agency offices, and boarding schools to follow established eligibility criteria and admission procedures.

--Develop space utilization, staffing, and funding criteria for boarding schools that will insure efficient operation and that the educational needs of Indian children are met.

--Consolidate boarding schools into the minimum number of facilities needed to meet the above criteria.

--Dispose of unneeded facilities, buildings, and equipment in accordance with established procedures.

--Include provisions for linking procurements to specific educational needs in developing comprehensive education programs.

--Develop a system that will provide information with which to monitor program expenditures and/or determine need for detailed evaluations.

--Monitor and evaluate expenditures of funds at the school level periodically.

--Reevaluate staffing and funding of maintenance at Navajo area boarding schools and make adjustments necessary to insure that these facilities are maintained adequately.

--Implement plans to decentralize and simplify the Navajo area maintenance system.

"INFORMATION ON ORGANIZATION AND FUNCTIONS OF THE INDIAN EDUCATION RESOURCES CENTER" (CED-78-57, FEB. 15, 1978)

This report points out that the assistance provided by the Indian Education Resources Center was considered generally satisfactory by its clientele--mostly Bureau of Indian Affairs field offices and schools. However, Center officials and the Director of Indian Education said that the additional needed services, such as monitoring and evaluating of school activities, had not been provided because of staffing problems and/or travel fund limitations.

"TRIBAL PARTICIPATION IN THE BUREAU OF INDIAN AFFAIRS BUDGET SYSTEM SHOULD BE INCREASED" (CED-78-62, FEB. 15, 1978)

Tribal participation in the Bureau of Indian Affairs fiscal year 1979 budget system and program funding decisions varied. Therefore, the budget represented some, but not all, tribal funding priorities. Major improvements were needed in the Bureau's system to increase tribal participation so that the budget would reflect tribal needs and priorities.

The Bureau had proposed a new process for setting funding priorities. It would build on and modify, rather than replace, the current budget process. However, conditions will again limit tribal participation in developing the fiscal year 1980 budget.

Recommendations

The Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to:

--Give the tribes complete funding data and information.

--Inform the tribes of the exact amount of funds actually available to change the mix of programs and funding priorities.

--Narrow the criteria for excluding a program from the funding priority-setting process and for not assigning program funds to the tribes for priority setting.

--Give the tribes more time to develop program-funding priorities and an opportunity to revise their priorities due to changing conditions.

--Revise the procedures and requirements for setting program-funding priorities to make sure that tribal

officials are given an opportunity to identify their priorities.

--Give the tribes an opportunity to participate in developing new programs and making major revisions to existing programs.

--Determine how the Bureau's Planning, Programing and Evaluation Data System can be improved to better evaluate program performance and managerial effectiveness.

--Identify the number of Indian tribes and Alaska Native groups requiring planning assistance, inform the tribes concerning the benefits to be derived from comprehensive plans and needs analyses, and give funding priority to tribal requests for comprehensive planning assistance.

--Reflect tribal funding priorities in the Bureau's budget.

"MORE EFFECTIVE CONTROLS OVER BUREAU OF INDIAN AFFAIRS ADMINISTRATIVE COSTS ARE NEEDED" (FGMSD-78-18, FEB. 15, 1978)

The Bureau of Indian Affairs reduced funds for Indian programs by about $7.6 million in fiscal years 1977 and 1978 rather than reduce its administration costs as directed by congressional committees.

Recommendations

The Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to:

--Act immediately to reduce its administrative cost for fiscal year 1978 by most, if not all, of the $4 million as requested by the committees.

--Discontinue plans to show reimbursements for computer services as reductions in administrative costs.

--Identify and eliminate (1) positions that overlap or layer another position and (2) unqualified personnel.

--Revise its accounting system operations to use its organizations' operating budgets as approved by the Bureau's budget office to control costs and prevent unauthorized deviations from operating budgets.

--Issue instructions to identify the specific subaccounts to which each Bureau organization can charge its administrative costs, consistent with any changes requested by congressional committees to the appropriation structure, and emphasize the need to comply with the instructions.

--Eliminate the production of all financial reports not needed for effective and efficient program management and revise all retained reports to include only essential data.

--Develop edit routines in the automated system to reject all invalid and improper transactions and provide for prompt correction of rejected transactions.

--Establish fund controls that will keep area offices within amounts budgeted and require them to obtain prior approval from the Bureau's budget office for significant deviations.

--Resubmit the revised system to us for approval.

Along with the Subcommittee on the Interior, House Committee on Appropriations, the Subcommittee on the Department of the Interior and Related Agencies, Senate Committee on Appropriations, should:

--Provide the Bureau of Indian Affairs with a separate appropriation for administrative expenses or place a percentage or dollar limitation on the amount of its total appropriations that can be spent for administrative costs.

--Specify in future appropriations the amounts that can be used to pay personnel costs, especially when desiring to reduce the number of administrative personnel.

Should either of these alternatives be adopted, the Secretary of the Interior should require the Bureau to change its budgets and related justifications to show total administrative costs and personnel by specific Bureau offices and by each program category. Also, the Secretary should direct the Bureau to include statistics on the Bureau's total work force and total personnel employed by each Bureau office in its budgets and related justifications.

"THE INDIAN SELF-DETERMINATION ACT--MANY OBSTACLES REMAIN" (HRD-78-59, MAR. 1, 1978)

Bureau of Indian Affairs and Indian Health Service dominance over Indian programs and services had changed little since enactment of the Indian Self-Determination and Education Assistance Act, although the act established a Federal policy permitting tribes to assume control over their own programs.

Recommendations

The Secretaries of the Interior and Health, Education, and Welfare should direct the Bureau and the Indian Health Service to establish criteria for measuring progress in implementing the Self-Determination Act and to implement procedures for:

--Making sure that tribes have a full understanding of their options under title I.

--Helping tribes obtain information needed for fully informed decisions on assuming programs or program segments. This may require helping tribes assess their ability to operate and manage the contractable programs.

--Guiding the tribe in determining how to acquire the skills or resources needed to contract for a particular program or program segment, including training and assistance from the agencies.

"SUBSTANDARD INDIAN HOUSING INCREASES DESPITE FEDERAL EFFORTS--A CHANGE IS NEEDED" (CED-78-63, MAR. 31, 1978)

Although the Federal Government built nearly 27,000 new homes on Indian reservations from 1970 to 1976, the number of Indian families living in substandard housing increased from about 63,000 to about 86,000 during that period. This was due to

--more Indian families living on reservations,

--a relatively low level of housing production, and

--inadequate management of new homes.

Recommendations

The Congress should redefine the national policy for Indian housing and establish a program with realistic goals and objectives for implementing that policy. To be effective, an Indian housing program must be centrally administered and must be designed to recognize that Indian housing needs and problems on isolated, rural reservations are different than those encountered in urban non-Indian areas. Accordingly, in establishing a program for Indian housing, the Congress should

--consolidate Indian housing programs and the responsibility for Indian housing into a single agency and

--recognize that a wide range of housing assistance options such as loans, grants, and subsidies will be needed to serve the various income levels and cope with the unique conditions and special needs of Indians living on reservations.

Major changes are necessary to solve the problems experienced in meeting Indian housing needs. Pending the establishment of a new national policy on Indian housing and the implementation of any new or redirected programs, however, prompt action needs to be taken to improve the effectiveness and efficiency of existing programs. Accordingly, the following actions should be taken.

The Secretary of Housing and Urban Development should:

--Assess goals for Indian housing in view of the increasing need and provide the funds necessary to meet these goals.

--Insure that prototype costs be established for each Indian area unless a special analysis is made showing that such costs are not needed.

--Develop procedures to insure that projects are completed as planned in terms of quality and completeness.

--Revise procedures to permit the lesser of the appraised value or cost of leaseholds to be fully considered as part of the total project development costs.

--Reassess the present structure by which housing on reservations is managed.

--Insure that home buyer training required by the Indian housing regulations issued in March 1976 is provided.

The Secretary of the Interior should:

--Determine the number of Indian families which can only be served by the housing improvement program and identify the location and type of assistance needed in terms of new construction or rehabilitation.

--Develop a formal plan for meeting that need and request from the Congress the necessary financial and other resources required to carry out the plan.

The Secretary of Agriculture should direct the Farmers Home Administration to place a greater emphasis on Indian housing, develop a more effective outreach program, and provide staff necessary to implement such a program.

"THE BUREAU OF INDIAN AFFAIRS IS SLOW IN PROVIDING SPECIAL EDUCATION SERVICES TO ALL HANDICAPPED INDIAN CHILDREN" (CED-79-121, SEPT. 4, 1979)

This report pointed out BIA's failure to make progress in achieving the Education for All Handicapped Children Act of 1975 mandate of providing a free and appropriate public education to all handicapped children. It also points out that BIA failed to hire 202 special education teachers and specialists provided for by the Congress in appropriating an additional $5 million in fiscal year 1979.

Our review of two area offices showed that BIA had experienced delays in meeting the act's requirements to serve all handicapped children. BIA experienced delays in implementing

and administering an effective program, identifying and evaluating the handicapped children needing special education, and recruiting and hiring needed special education personnel.

Recommendations

The Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to:

--Determine the number of special education personnel needed by each location and develop a plan to hire those personnel at the earliest possible date.

--Develop policies, guidelines, and realistic goals to meet the mandate of the Education for All Handicapped Children Act of 1975, for delivery of special education services to all handicapped children in BIA-operated schools.

"ALTERNATIVES FOR THE BUREAU OF INDIAN AFFAIRS PUBLIC SCHOOL FINANCIAL ASSISTANCE PROGRAM" (CED-79-112, SEPT. 6, 1979)

This report assessed BIA's administration of the basic support and tuition portions of the Johnson O'Malley program authorized by Public Law 73-167, as amended, April 16, 1934. It also identified alternatives for the Congress to consider in deciding the basic support program's future.

Recommendations

If the Congress decides that BIA should continue administering the basic support programs, the Secretary of the Interior should direct the Assistant Secretary for Indian Affairs to:

--Develop adequate criteria for determining whether basic support program funds are meeting the educational needs of Indian students attending public schools.

--Seek legislative clarification from the Congress on whether basic support program funds should be used to meet the minimum or higher educational standards and requirements of States.

--Strengthen the BIA's procedures and practices to ensure that schools and school districts meet established criteria to qualify for the funding.

"NAVAJO COMMUNITY COLLEGE FUNDING PROBLEMS" (CED-80-79, MAR. 21, 1980)

This report pointed out that during fiscal year 1980 appropriations hearings, BIA overestimated the Navajo Community College's Indian enrollment. The figure used for the "full-time

equivalent" student enrollment resulted in BIA's obligating $3.9 million more to the college than allowed by the grant formula of the Tribally Controlled Community College Assistance Act of 1978.

The report also points out that had the grant formula prescribed by the act been applied, the college would have received about 50 percent less funding than it received the previous year.

Recommendations

The Secretary of the Interior should require the Assistant Secretary for Indian Affairs to:

--Review, with the assistance of the Inspector General, the Navajo Community College's management practices and operating expenses to determine the most equitable method for funding the college. This should be reported to the appropriate congressional committees for their consideration in making necessary appropriation and legislative changes.

--Revise the regulations so that they do not appear to allow Federal funding of the Navajo Community College for operations, maintenance, and construction activities under the Snyder Act of 1921 or any law other than the Navajo Community College Act of 1971, as amended.

"SHOULD THE BUREAU OF INDIAN AFFAIRS CONTINUE TO PROVIDE EDUCATIONAL SERVICES TO INDIAN CHILDREN?" (CED-80-72, APR. 23, 1980)

This report pointed out that BIA had failed during the 1970s to provide Indians with a quality education and that severe management problems had persisted for years. The Congress enacted title XI of the Education Amendments of 1978 to provide a framework for correcting the severe educational and management deficiencies which have thwarted the delivery of quality education to Indians. It stated that BIA had responded to the act by taking positive steps to correct its deficiencies; therefore, a transfer of BIA's education programs to the Department of Education would not be appropriate at this time.

The report concluded that if adequate progress is not made or cannot be measured because of inadequate testing criteria, we believe the Congress will have to seriously consider other alternatives for administering Indian programs, including taking the responsibility away from BIA.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

14 JUL 1981

Henry Eschwege, Director
Community and Economic Development Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

Our comments are enclosed on your proposed draft report entitled "Fundamental Changes Needed in Providing Services to Indians".

Our comments are presented in two parts. The first part contains background material and comments on your specific recommendations. The second part contains comments on your organizational recommendations.

Sincerely,

Assistant Secretary - Indian Affairs

Enclosure

General

Except as noted below or in our specific comments on the recommendations, we generally agree with the findings contained in the report even though its title appears to be overly broad in view of its focus and recommendations concerning grants and contracts. We appreciate receiving the report as it confirms information previously furnished by the Bureau and provides support for certain actions that have already been taken. Those actions will be discussed further below.

We do not, however, agree with your organizational recommendations. This also will be addressed further.

We have not addressed the audits cited in the appendices of the report as they were considered previously.

Closeout of Completed Contracts and Grants

Even before assuming this office, I was advised by staff that a considerable number of contracts and grants had been completed over the past several years, but not closed out. As a consequence, we started a process which should result in the physical closeout of all completed contracts and grants by April 1, 1982. To date, we have identified all such contracts and are formulating a comprehensive closeout plan. In addition, our Office of Technical Assistance and Training with the cooperation of our Aberdeen Area Office is field testing a monitoring system that will be used to track our progress. After each Area's contracts and grants are physically closed out, we will request audits as needed from the Inspector General's Office or will obtain them from private auditing firms through the Inspector General's Office.

Tribal Financial Management

The promulgation of Attachment P to OMB Circular A-102 brought Indian tribes within the purview of the "single audit" concept. The Inspector General, however, recognized that many tribes do not have an accounting system that will accommodate this concept. As a consequence, that office along with several other agencies ranked the tribes' accounting systems from I through IV. Those rated number I were judged adequate to accommodate the single audit concept. Those rated from II through IV, were judged to have systems that needed further work before the single audit concept would prove effective. On June 17, an action plan was finalized which has as its goal the upgrading of all Tribal category IV accounting systems to category III by June 30, 1982. This effort coupled with the experience gained thereby should eventually answer many of the concerns expressed in the report concerning the inadequacy of many tribal financial management systems.

Plans for upgrading tribal accounting systems in general will be formulated and will be included in our response to the final version of your report.

[GAO NOTE: Some page and other references have been changed to reflect the final version of the report.]

Communications with Tribes

The issues raised in the report impact or have the potential to impact tribes as much as the Bureau. We, therefore, intend to enlist the tribes in our efforts to obtain accountability by informing them of what has been found, our proposed solutions and their responsibilities. We intend to let the tribes know, in no uncertain terms, what we expect. This statement will be issued by July 30, 1981, in order to correspond with the instructions we will be issuing to the Area Offices.

Comments on Recommendations (pages 35 & 36)

1. "Require that all contract and grant agreements include specific criteria against which to measure performance"

-- We agree that contract and grant work statements should be as clear and specific as possible as it may not otherwise be possible to accurately judge the contractor's or grantee's performance. We generally agree that it would be desirable to include "specific criteria" against which to measure performance in the agreements whenever possible. However, the use of the words "specific criteria" is of concern. Our contracts with tribes are for the operation of programs. Some of these programs do not readily lend themselves to specific criteria for measurement. In fact, establishing specific criteria may not always be desirable as it could cut down on innovative approaches to solving problems and restrict the tribes ability to respond to unique situations.

We suggest a better approach would be to strive for a clear, concise statement of work within which a monitoring plan can be developed that is understandable to all parties. We propose that the Bureau program official responsibile for reviewing the work statement be required to certify that the work statement is satisfactory for such purpose and to prepare the monitoring plan. The certification could be extended to include tribal certification of its understanding of the monitoring plan. Instructions on this matter will be issued no later than July 30, 1981. In addition, we will prepare a plan within 60 days to effectively monitor progress on meeting this recommendation.

[GAO COMMENT: We believe specific criteria would include a clear, concise statement of work and as such provide a basis for measuring progress in most cases.]

2. "Require a contract or grant be cancelled where tribal performance is unsatisfactory".

-- We generally agree with this recommendation. However, it should be noted that Section 109 of P.L. 93-638 sets forth conditions for contract cancellation and reassumption of programs by the Bureau. These conditions provide certain safeguards to the contracting tribal organizations that the Bureau must observe. These include the right to a hearing. Therefore, cancellation under P.L. 93-638 is not the same as under traditional Federal Procurement Regulation procedures. We nevertheless will prepare and issue instructions by July 30, 1981 that emphasize compliance with the appropriate P.L. 93-638 regulations.

APPENDIX III

[GAO COMMENT: We did not intend to recommend action not authorized by the legislation. We wanted to emphasize the need to use the cancellation provisions in the existing legislation. We have, however, modified the recommendation to make it more compatible with the legislation. (See p. 35 and 37.)]

3. "Prohibit award of contracts in which the starting date precedes the date of award".

-- Although we generally agree with this recommendation, we feel there are circumstances when latitude should be afforded. These are, when the tribe has been operating the program under contract, there are no major changes in the work statement and the tribes application was submitted in sufficient time, but the Bureau did not make an award promptly. Although instructions will be issued to prohibit the practice, to extend contracts if they will expire before new contracts can be awarded, to contract early in the cycle subject to availability of funds, etc., we are still faced with a human factor. We will continue to emphasize the need to contract in a timely manner but do not feel that a blanket prohibition is reasonable. Further, even the Federal Procurement Regulations (41 CFR 1-15.712-6) recognize that costs incurred prior to contract award can be allowed if included in the negotiated agreement even if they might not be otherwise allowable after award.

Appropriate instructions will be issued to the Area Offices no later than July 30, 1981. In addition, we will advise all tribes of the problem and advise them of the consequences of noncompliance. This will also be accomplished by July 30, 1981. A plan to effectively monitor compliance with our instructions will be issued in 60 days.

[GAO COMMENT: Our recommendation was not intended to prohibit exceptions provided for in the Federal Procurement Regulations. We believe the large number of cases (141 out of 175) supports the need for corrective action.]

4. "Enforce compliance with the letter of credit procedures. This should include (1) precluding tribes from obtaining cash in excess of their immediate needs, (2) requiring the tribes to submit timely expense vouchers, and (3) revoking the letter of credit authority for tribes that fail to comply with letter of credit procedures".

-- We agree with the recommendation and will issue implementing instructions by no later than July 30 and devise and implement a monitoring system within 60 days. The instructions will require a complete review of all contracts with instructions to revoke any letter of credit when the tribe is not submitting liquidation invoices in a timely manner or drawing down funds in excess of needs. The instructions will apply to the letter of credit as a whole. In addition, we will advise the tribes of the instructions we are giving the Areas and our reasons for insisting on strict enforcement of letter of credit procedures.

In addition to the above, we are exploring the possibility of setting up a pilot program with permission of the Department of Treasury which would utilize electronic transfer of funds between the tribal contractor's bank and the

cognizant Federal Reserve Bank. If successful, this system should considerably shorten the time between withdrawal and use and lessen the tendency to drawdown in excess of needs. Our desire is to implement the pilot project early in fiscal year 1982, but our timing is somewhat dependent on the Department of Treasury. Our present plans are to work with an accounting Level I tribe located in the Albuquerque Area so that our Division of Accounting Management in Albuquerque can monitor the project.

5. "Require monitoring of tribal letter of credit withdrawals on each contract or grant to ensure a tribe does not withdraw more than the amount authorized by the contract or grant".

-- We agree with the recommendation and will issue implementing instructions by no later than July 30, 1981.

6. "Require BIA to arrange with CPA firms for annual financial audits of contract and grants with Indian tribes".

-- We agree with this recommendation and will include funds for such purpose in our FY 1982 contracts and grants. Instructions will be issued by no later than July 30, 1981.

7. "Prohibit the practice of using prior fiscal year funds to pay for goods and services that are to be provided in the subsequent fiscal year unless the services are part of a contract for an end product and it is not feasible to divide the contract between fiscal years".

-- We cannot agree with this recommendation as written. Our disagreement is with that part of the recommendation that requires the "services" to be "part of a contract for an end product" (emphasis added)

Since P.L. 93-638 contracts are for the operation of Bureau programs, they are all, in effect, service contracts and most have no deliverable "end products" per se. This recommendation, in essence, says there are no inseverable service contracts unless the ultimate objective of the contract is the delivery of an "end product". We cannot agree with such a conclusion. One example should illustrate our point. Most institutions of higher learning start the first quarter or semester of the school year during middle August to early September. At that time, tuition is due. Bureau contracts for the operation of higher education scholarship programs provide for the payment of tuition. The start of the school year precedes the start of the new fiscal year. However, the need to pay the tuition is a need that arises during the year the appropriation was made, even though the bulk of the quarter or semester falls within the next fiscal year. There is no end product per se. The purpose of the person going to school and thus the contract could be frustrated, and might even be impossible, if the tuition cannot be paid. Much the same is true of many education programs. The objective of moving a young person from one grade level to another could be rendered impossible under this recommendation.

The determination of whether a contract is or is not severable is not set forth in regulations. The only guidance of which we are aware is found in various decisions of the Comptroller General. These decisions, however, recognize that the nature of the situation has a bearing on the ultimate answer. This recommendation does not recognize this fact.

We do, however, appreciate the intent of the recommendation. Therefore, we will instruct our Area Contracting Officers to obtain, prior to award, a Solicitor's review of all contracts financed with current fiscal year appropriations whenever the period of performance extends into the next fiscal year. Those contracts the Solicitor determines are not inseverable will be awarded only if appropriate fiscal year funds are available. These instructions will be issued no later than July 30, 1981.

[GAO COMMENT: We agreed with Interior that it may not always be feasible to divide a contract between fiscal years and have modified our recommendation accordingly. Nevertheless, we believe the contract we questioned would not fall into the exception category. Interior is planning to take action which, if properly implemented, should prevent this situation from recurring. Our recommendation was aimed at achieving this result.]

8. "Prohibit award of contract modifications without a request from the tribe and a corresponding increase in the work statement or in the amount of services to be provided".

-- We agree with the recommendation. Bureau policy forbids this. However, we will issue instructions to that effect no later than July 30, 1981. In addition, we will prepare a plan for monitoring compliance within 60 days.

9. "Require tribes to submit appropriate financial and program progress reports".

-- Once again, this is a matter of enforcement of existing regulations rather than creation of new regulations. Instructions will be issued to implement the recommendation no later than July 30, 1981. In addition, we will prepare a plan for monitoring compliance within 60 days.

10. "Prohibit award of contracts that are not authorized by legislation or related to legislative objectives".

-- No comments are made on this recommendation as it was withdrawn by telephone on June 16, 1981.

11. "Require tribes to develop adequate property management systems".

-- We agree with the recommendation. It has been difficult to get tribes to respond to urgings that they improve their property management systems. In itself the lack of an adequate property management system is not a valid reason to decline to contract under P.L. 93-638. To make it such would require a change in the regulations and possibly the statute. From a practical point of view, this may prove difficult. However, we propose to prepare and distribute a property management "handbook" to all Tribes within 120 days and to issue a strongly worded letter to all tribes emphasizing the importance and necessity for property accountability.

Organizational changes (pages 25 - 32)

Proposal 1

Establish an independent office of Contract and Grants Administration reporting directly to the Assistant Secretary for Indian Affairs with a review panel monitoring contracts over $100,000.

Proposal 2

In addition to Proposal 1, establish a separate Office of Self-Determination directly under the Assistant Secretary for Indian Affairs.

Proposal 3

Modify Proposal 2 by having the Office of Contract and Grants Administration directly under the Assistant Secretary for Policy, Budget and Administration.

We do not agree with any of the above proposals. Therefore, we are discussing them collectively rather than individually.

We realize that the intent of the proposals is to improve administration of P.L. 93-638 contracts and grants and reduce pressure on Bureau employees while still recognizing the Bureau's responsibility to provide technical assistance to the tribes. Nevertheless, we feel all proposals have the same common, and in our opinion, fatal flaw and are based on three premises that are not entirely accurate.

The common flaw in each of the proposals is that the Bureau's authority to administer P.L. 93-638 is diluted or completely eliminated while the responsibility for its success is retained.

The premises on which the proposals are based and which we find are less than accurate are:

1. That the contractual relationship between the Bureau and the tribes is or should be one of "arms length".

2. That monitoring of actions by a Washington based committee or panel will ensure accountability.

3. That major organizational changes are required to accomplish change.

Although we recognize the urgency of taking action to increase Bureau and tribal accountability for P.L. 93-638 contracts and grants, we do not feel we can ignore the historical relationships the Bureau has with tribal organizations. We, therefore, feel that what is needed in this regard can be accomplished within the current organization without resort to Washington based panels.

We are currently in the process of revising the P.L. 93-638 regulations in recognition of the Congressional mandate contained in P.L. 95-224, the Federal Grant and Cooperative Agreement Act. The revised regulations will shift P.L. 93-638 contracts to grants and will vest signatory as well as total administration authority for all P.L. 93-638 agreements in the Agency Superintendents. As part of this change the Agencies will be required to establish full time P.L. 93-638 administrative positions in the Agency Offices. Establishing

these positions at the Agency offices should overcome what the report views as a "conflict of interest" as the employees positions will no longer be in jeopardy of being contracted out. In addition, the Areas will be required to establish an Agency oversite function within the Area Office which will report at least quarterly to the Central Office through the Area Director. Through this mechanism, we feel that the intent of the organizational recommendations - establishment of a mechanism to obtain accountability - can be accomplished.

The regulations implementing the change in the P.L. 93-638 regulations are scheduled for completion around October 1, 1981. Instructions implementing the changes are scheduled for release at the same time.

The new regulations will not go into effect in time to significantly impact the P.L. 93-638 process during fiscal year 1982. We anticipate the bulk of our 1982 fiscal year agreements to be contracts. Therefore, we will prepare and issue instructions within 60 days that will make the Agency Superintendents completely responsible for administration of all P.L. 93-638 contracts and grants by appointing them COR or GOR as appropriate. We will also require them to identify full time contract or grant administrators at the Agency to serve as co-COR and GOR. The Area will, in turn, be required to set up an oversight function similar to what was discussed above.

[GAO COMMENT: Although the actions planned by Interior to deal with this matter are a step in the right direction and should improve the situation, we still believe some organizational change is necessary to separate the procurement and program functions. The three organizational structures were offered for consideration and could be modified to meet the needs of the Department. We do not see how separating the procurement and program functions eliminates BIA authority to administer Public Law 93-638. Even with the two functions separated, we would anticipate that personnel from both groups would still work together to develop the contractual documents. Once the terms and conditions have been specified and agreed to by the tribe, we believe the contract function needs to have a separate chain of command in order to ensure compliance with the terms and conditions. This would also allow the program personnel the opportunity to concentrate on program delivery and provide technical assistance rather than have the additional duty of monitoring contracts and grants.

[Regarding the premises, we agree that BIA and the tribes have some contractual relationships that are not totally "at arm's length." This situation, however, would not preclude the separation of the procurement and program functions and enforcing the terms and conditions of the contract or grant after it has been negotiated with the tribe. Our suggestion of a Washington-based pannel was not aimed so much at ensuring accountability but more at increasing the visibility of large dollar contracts. We agree that major organizational changes are not required to accomplish change. In this case, however, we believe some organizational change is neces-

sary in order to provide the opportunity for better written contracts and compliance with the contractual terms and conditions.

[In a subsequent meeting, Interior officials agreed to reconsider our suggestions for reorganizing BIA. (See p. 41.)]

Miscellaneous

On page 14, paragraph 4, line 7, change "250,000" to "$120,000".

On page 19 a "Navajo Community College" audit is discussed. The overall funding of the Navajo Community College, in view of recent legislative changes and the cited audit, is currently under discussion with the Inspector General's Office, the General Accounting Office and Congressional staff. It is anticipated that a position will be forthcoming within the next 60 days.

APPENDIX IV

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

17 JUL 1981

Mr. Gregory J. Ahart
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft report entitled, "Fundamental Changes Needed in Providing Services to Indians." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

Richard P. Kusserow
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
ON THE GENERAL ACCOUNTING OFFICE DRAFT REPORT ENTITLED
"FUNDAMENTAL CHANGES NEEDED IN PROVIDING SERVICES TO INDIANS"

General Comments

The majority of the findings and recommendations in the General Accounting Office (GAO) report are directed to the Bureau of Indian Affairs, Department of the Interior, and to a lesser degree to the Indian Health Service (IHS) of the Department of Health and Human Services (HHS). The HHS responds here only to the GAO findings and recommendations applicable to the IHS.

IHS is involved in one of the contract award practices questioned by GAO (page 20)--using expired appropriations in funding contracts. The IHS practice to use prior year funds to pay for the fulfillment of contracts in a subsequent year is based on the appropriations language allowing carryover contained in Pub.L. 96-514 (94 Stat 2977-78). Against this background, the Office of the General Counsel, HHS, advises that the GAO recommendation against the use of prior year funds appears moot.

Regarding the continuance of the practice, IHS has issued a written procedure to all IHS contracting offices, ISDM 81-03, Contracting Process Under the Indian Self Determination Act, delineating the availability of Fiscal Years 1980 and 1981 funds for contract fulfillment bridging two fiscal year periods. This practice will continue for a while even though IHS headquarters and HSA are jointly developing a contracting procedure for rescheduling performance periods effective October 1 of each year. Such performance periods will be funded only with current fiscal year appropriations.

[GAO COMMENT: We did not make a specific recommendation to the Department to prohibit this practice because of the appropriation language in Public Law 96-514 allowing this practice in fiscal years 1980 and 1981. The examples discussed in the report, however, involve fiscal years 1978 and 1979. We agree with the Department's planned actions in this regard.]

PHS will monitor IHS' progress in the implementation of the GAO recommendations in which we concur.

GAO Recommendation

The Secretary of Health and Human Services should direct the Administrator of the Health Services Administration to revise IHS's policies, procedures, and practices as appropriate to:

--Require that all contract and grant agreements include specific criteria against which to measure performance.

Department Comment

We concur. A contract format oriented particularly to Pub.L. 93-638 provisions was issued in January 1981 to all contracting officers. The new format includes an article on agreement on description and scope of work wherein the contractor is required to perform specific work. Under

another article of agreement for services to be furnished and delivery time, the contractor is bound to a "workload reporting requirement." The new format specificities will provide an array of criteria against which performance can be measured.

A similar format for grant award purposes will be issued shortly, i.e., workload standards as defined in the grant award instrument which will provide a means for measuring performance.

A project officers training course, currently in the process of consultant contract award, will further train Federal Government and Tribal Project personnel in contract performance and monitoring requirements.

GAO Recommendation

--Require a contract or grant be cancelled where tribal performance is unsatisfactory.

Department Comment

We concur in part. The Indian Self-Determination Act, Pub.L. 93-638, Section 109 (25 U.S.C. 450m) specifically provides that where the Secretary finds that the tribe's performance involves: (1) the violation of the rights or endangerment of the health, safety or welfare of any persons, or (2) gross negligence or mismanagement in the handling or use of funds, the Secretary may rescind such contract or grant agreement and assume or resume control or operation of the program. Procedures for prior notice and a hearing are also required. In a case of immediate threat to safety, the Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control of operations of a program and provide a hearing within 10 days of such action. In recommending cancellation when a tribe's performance is "unsatisfactory," GAO would substitute a standard which is not authorized by the statute.

[GAO COMMENT: We have modified this recommendation to make it more compatible with the legislation. (See p. 36 and 37.)]

GAO Recommendation

--Prohibit award of contracts in which the starting date precedes the date of award.

Department Comment

We concur. To eliminate such discrepancies, IHS has instructed its contracting staff on this matter. Also, IHS is in the process of implementing a tribal workload reporting document which will furnish data on program progress simultaneously with the tribe's financial management reporting system.

GAO Recommendation

--Require tribes to develop adequate property management systems.

Department Comment

The Office of Property Management, HSA, is working directly with IHS property personnel in the development of adequate tribal property

management systems. This system is scheduled for implementation during Fiscal Year 1982.

GAO Recommendation

--Require tribes to submit appropriate financial and program progress reports.

Department Comment

We concur. Tribal contractors and grantees are required to submit periodic expenditure reports and performance reports to IHS contracting and grants management officers. Some of these reports have not been timely but new awards cannot be made until the reporting on the old has been completed. IHS contracting officers are guided by the Departmental Procurement Manual for much of the reporting requirements. The recently implemented IHS/HSA review process for contracts and grants is expected to bring substantial improvement to this area. The only exception presently permitted in report lapses is for emergency cases and retroactive contractual coverage as defined in HSA's policy letter 80-2. Even here, prior approval for incurrence of emergency cost outlays must be obtained.

Technical Comments

The table on page 4, showing the amount of Indian contract and grant activity in the IHS within the Public Health Service, should be corrected to read as follows:

	(in thousands)		
Indian Health Service	FY 1978	FY 1979	FY 1980
Indian Self-Determination Act, Pub.L. 93-638			
Contracts	$32,293	$48,341	$58,446
Grants	12,336	10,170	4,231
Buy Indian Act			
Contracts	58,107	47,525	38,251

[GAO COMMENT: We revised the report accordingly.]

(145910)

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